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Convention on the Elimination of All Forms of Discrimination against Women

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COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 18 OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Initial reports of States parties

NAMIBIA

It has been said that women are that half of the population that hold up the sky, but we need our arms strengthened in order to play our role effectively ...

Ms Anna Frank, Member of Parliament, 30 June 1992.
Statement made during the parliamentary discussion of the ratification of CEDAW.

CONTENTS

FOREWORD 7
ACKNOWLEDGEMENTS 9
FACTS AND FIGURES 10
LIST OF ABBREVIATIONS 12

SUMMARY 13

PART 1

INTRODUCTORY SECTIONS 31

A. General, Social, Economic, Political and Legal Structures 31
B. Implementation of CEDAW 39
C. Monitoring Compliance with the Convention 43
D. Remedies Available to Individual Women who have Suffered Discrimination 44
E. CEDAW and Beijing 45

PART 2

ARTICLE 1: THE DEFINITION OF DISCRIMINATION 47

1.1 Constitutional Provisions Pertaining to Women 47
1.2 The Scope of Discrimination 48

ARTICLE 2: POLICY MEASURES TO ELIMINATE SEX DISCRIMINATION 50

2.1 Introduction 50
2.2 The Principle of Equality of Men and Women and Prohibitions on Sex Discrimination 50
2.3 The Protection of Women Against Acts of Discrimination 51
2.4 Discrimination by Public Authorities and Institutions 51
2.5 Steps to Eliminate Discrimination Against Women by Any Person, Organisation or Enterprise 52
2.6 Repeal of National Penal Provisions which Discriminate Against Women 52

ARTICLE 3: GENERAL PROTECTION OF EQUAL HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS 57

3.1 Introduction 57
3.2 Rape 57
3.3 Other Sexual Offences 61
3.4 Domestic Violence 61
3.5 Other Incidences of Violence Against Women 62
3.6 Women an Child Abuse Centres 63

/...

3.7 Gender Sectoral Committee on Violence Against Women 64

ARTICLE 4: **AFFIRMATIVE ACTION** 65

4.1 Constitutional Authorisation for Affirmative Action 65
4.2 Statutory Affirmative Action Provisions 65
4.3 Affirmative Action in Employment 67
4.4 Affirmative Action in Government Policies and Programmes 68
4.5 Affirmative Action for the "Girl Child" 68
4.6 Maternity Protection 69

ARTICLE 5: **SEX ROLE STEREOTYPING** 70

5.1 Introduction 70
5.2 Sexuality Today 71
5.3 Women as Mothers 72
5.4 Education 72
5.5 Portrayal of Women in the Media 74
5.6 The Miss Universe Beauty Pageant 75

ARTICLE 6: **PROSTITUTION AND TRAFFICKING IN WOMEN** 77

6.1 Prostitution 77
6.2 Inter-Country Adoption 79

ARTICLE 7: **WOMEN IN POLITICAL AND PUBLIC LIFE** 80

7.1 Equal Rights to Vote, Hold Office and Participate in Non-Governmental Organisations and Associations 80
7.2 Women in Parliament 80
7.3 Affirmative Action in Namibia's First Local Government Elections 82
7.4 Women in the Public Service 83
7.5 Women in Law Enforcement and the Administration of Justice 85
7.6 Women in Traditional Authorities 86
7.7 Women and the Media 87
7.8 Women in the Private Sector 88
7.9 Women in Trade Unions 89
7.10 Women in the Churches 90
7.11 Women in Non-Governmental Organisations and Community-Based Groups 92

ARTICLE 8: **INTERNATIONAL REPRESENTATION** 94

8.1 Representation in Foreign Missions 94
8.2 International Delegations 95

ARTICLE 9: **NATIONALITY** 96

9.1 Acquisition and Loss of Namibian Citizenship 96
9.2 Illegal Aliens in Namibia 97
9.3 Refugees in Namibia 97

ARTICLE 10: **EDUCATION** 99

10.1 Constitutional Provisions 99
10.2 Basic Education 99
10.3 School Drop-out Rates and Teenage Pregnancy 108
10.4 Curriculum Development 111
10.5 Gender Stereotyping in Course Selection and Career Choice 111
10.6 Special Schools and Programmes 116
10.7 Literacy Programmes 116
10.8 Women in Educational Posts 117
10.9 Gender Issues in Students' Organisation 119

ARTICLE 11: **LABOUR DEVELOPMENT** 120

11.1 Size of the Labour Force 120
11.2 Employment by Urban/Rural Areas and Age 120
11.3 Employment by Status and Industry 121
11.4 Employment by Occupation and Education 122
11.5 A Profile of the Unemployed 122
11.6 Wage Differentials 123
11.7 Constitutional and Legislative Measures 125

ARTICLE 12: **HEALTH CARE** 133

12.1 Health Policy and Systems 133
12.2 Availability and Distribution of Facilities 133
12.3 Fertility, Infant and Child Mortality Rates 135
12.4 Teenage Pregnancies and Family Planning 137
12.5 Abortion 138
12.6 Measures Taken to Improve Health Care 141
12.7 Conclusion 142

ARTICLE 13: **ECONOMIC AND SOCIAL LIFE** 144

13.1 Family Benefits 144
13.2 Financial Credit 146
13.3 Sport 147
13.4 Cultural Life 149
13.5 Women and Disability 153

ARTICLE 14: **RURAL WOMEN** 155

14.1 Introduction 155
14.2 Status of Rural Women 155
14.3 Structures and Programmes to Promote the Advancement of Rural Women 157
14.4 Access to Services 159
14.5 Appropriate Technology for Rural Women 159
14.6 Economic Position and Access to Productive Resources 160
14.7 Government Policy on Agriculture and Rural Development 162
14.8 Conclusion 163

ARTICLE 15: LEGAL CAPACITY AND DOMICILE 164

15.1 Introduction 164
15.2 Civil Marriage 164
15.3 Law Reform in Respect of Civil Marriage 165
15.4 Customary Marriage 168

ARTICLE 16: MARRIAGE AND FAMILY RELATIONS 170

16.1 Introduction 170
16.2 The Right to Enter into Marriage 172
16.3 Free Choice of a Spouse and Consent to Marriage 173
16.4 Rights and Responsibilities During Marriage and at its Dissolution 173
16.5 Rights and Responsibilities as Parents, Including Guardianship and Power to Consent to Adoption 175
16.6 Family Planning 179
16.7 Personal Rights of Husband and Wife 181
16.8 Equal Rights to Control Property 181
16.9 Betrothal and Marriage of Children 181

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FOREWORD BY HIS EXCELLENCY PRESIDENT SAM NUJOMA

The preparation of Namibia's country report has been marked by a high degree of co-operation between the Government and non-governmental organisations (NGOs). In addition to the contributions of the Legal Assistance Centre, the draft report was also widely circulated among NGOs, as well as Government and private institutions which were invited to submit comments. In addition, a consultative workshop was held before the finalisation of the report in an effort to give various Government representatives and NGOs an opportunity to come together to discuss the draft as a group.

This high degree of Government-NGO co-operation on the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) report reflects the Namibian Government's conviction that progress on gender issues in the country will be most effective if addressed by Government and NGOs working in partnership.

The official date for the submission of this first country report for Namibia has already passed (Nov. 1993). However, it must be kept in mind that Namibia ratified CEDAW early in its history as a newly-independent nation in November 1992. The Government then faced the daunting task of restructuring virtually every aspect of a country emerging from an apartheid past in which the vast majority of its citizens, both male and female, were denied the most fundamental human rights. It must be realise that the legacy of racism and sexism that has been perpetuated over the years cannot be overcome in any short period of time. Therefore, at the end of 1995, after five full years of independence, the Government is in a better position to report on progress made in the implementation of CEDAW.

Because this is Namibia's first country report, the Government through the Department of Women Affairs, has made it as thorough and detailed as possible. This is the yardstick against which Namibia will measure its progress in the years to come.

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The report also includes quotes from a variety of sources. Namibia has developed its gender programme around CEDAW. This has been done in an effort to let the country report reflect the different voices of a wide range of Namibians.

Its important to note that the CEDAW is key to the gender programme of Namibia because the Government has developed a strategy to decentralise gender related issues and to implement the provisions of the Convention.

Sam Nujoma
PRESIDENT OF THE REPUBLIC OF NAMIBIA

ACKNOWLEDGEMENTS

The Department of Women Affairs would like to thank the Legal Assistance Centre (LAC) for its work in drafting this report.

The Department of Women Affairs would also like to thank those persons inside and outside government who took the time to read the draft report and to offer their comments.

NAMIBIA: FACTS AND FIGURES

The following information is drawn from the Population and Housing Census of 1991 and the *Namibia Trade Directory* of 1995/1996, published by the Ministry of Trade and Industry. This information is all contained within the relevant articles of the country report, but is included here for ease of reference.

CENSUS INDICATOR	FIGURES
Population size (#)	
Total	1 409 920
Males	686 327
Females	723 593
In urban rural (%)	
Urban	28
Rural	72
Sex ratio	
Males per 100 females	95
Area	
Square kilometres (km^2)	824 268
Population density	
Persons per km^2	1.7

CENSUS INDICATOR	FIGURES
Education - 15 years + (%)	
Never attended school	26
Currently attending school	19
Left school with some education	55
at primary level	49
at secondary level	45
at tertiary level	6
Children 6-16 attending school (%)	
Boys	81
Girls	85
Labour force - 15 years + (%)	
In labour force	58
Employed	81
Unemployed	19
Outside labour force	42
Students	45
Homemakers	33
Retired, too old, etc.	22
Housing conditions (% households)	
No heating	32
Safe water	65
Bush as toilet	61
Electricity for lighting	24
Own radio	59
Fertility	
Average # children per woman	6.1

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Age composition (%)	
Under 15 years	42
15-64 years	53
65+ years	5

Marital status - 15 years + (%)	
Never married	50
Married legally	30
Married consensually	12
Divorced/separated	3
Widowed	4

Nationality (%)	
Namibian	96
Foreign	4
Angola	49
South Africa	25
Zambia	9
Europe	11

Main languages spoken at home (%) **(NB: English is the official language)**	
Oshiwambo	51
Nama/Damara	13
Rukavango	10
Afrikaans	9
Otjiherero	8

Private households	
Number	254 389
Average size	5.2

Head of household (%)	
Males	61
Females	39

Infant mortality	
Deaths per 1,000 live births	67

Under-5 mortality	
Deaths per 1,000 live births	87

Life expectancy at birth (years)	
Males	59.1
Females	62.8

Annual population growth rate (%)	
Average for 1981-1991	3.5

Economic indicators (GDP 1995/96)	
Current market prices (N$ mil. 1994)	10 243
Constant market prices (N$ mil. 1994)	7 054
Per capita (1990 N$ constant prices)	4 591
Per capita (1990 N$ current prices)	6 664
GDP growth rate (% 1994)	5.4
GDP growth rate (% 1995)	2.0

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LIST OF ABBREVIATIONS

CANAMCO	Canada-Namibia Corporation
CASS	Centre for Applied Social Studies
CBO	community-based organisation
CCN	Council of Churches in Namibia
CIDA	Canadian International Development Agency
CSO	Central Statistics Office
DWA	Department of Women Affairs
fn	footnote
HFS	Household Food Security
LAC	Legal Assistance Centre
LRDC	Law Reform and Development Commission
NAMPOL	Namibian Police
NANGOF	Namibia Non-Governmental Organisations Forum
NANGOS	Namibia Association of Non-Governmental Organisations
NANSO	Namibian National Students' Organisation
NDHS	Namibia Demographic and Health Survey
NBC	Namibian Broadcasting Corporation
NCU/NACUL	Namibia Credit Union League
NDC	Namibia Development Corporation
NDT	Namibia Development Trust
NGO	non-governmental organisation
NIED	Namibia Institute for Educational Development
NLP	National Literacy Programme
NPC	National Planning Commission
NUNW	National Union of Namibian Workers
OAU	Organisation of African Unity
PHC	Primary Health Care
PSF	Private Sector Foundation
RDC	Rural Development Centre
REO	rural extension officers
RISE	Rural People's Institute for Social Empowerment
SCAs	southern communal areas
SSD	Social Sciences Division
TCCF	Technical Committee on Commercial Farmland
UNAM	University of Namibia
YWCA	Young Women's Christian Association

SUMMARY

PART I

1. Part I of the report includes background information on Namibia's general, social, economic, political and legal structures, primarily for the information of international readers.

2. CEDAW was ratified by Parliament in 1992. The Namibian Constitution provides that international agreements which are binding on Namibia shall form part of the law in Namibia. However, it is not yet clear whether a person could enforce CEDAW in the Namibian courts directly, or whether Namibian legislation must first be enacted to give effect to CEDAW. In any event, the provisions of the Namibian Constitution which address sexual equality have not yet sufficiently been utilised by women as tools for asserting and protecting their rights.

3. A Department of Women Affairs (DWA) was established in the office of the President shortly after independence to play a co-ordinating role in respect of gender issues. Since independence, the DWA has placed CEDAW at the center of its programs for a development of a strong gender-sensitisation and capacity-building strategy. DWA as the gender focal point in government, has solicited input on gender issues from women and community leaders in Namibia's different regions and provided funding for small businesses and other projects run by women. Obstacles faced by the DWA include limited staff and capacity, balanced against enormous public expectations. It would be better-placed to accomplish its objectives if it possessed greater status, such as representation at Cabinet level and at the parliamentary level.

4. CEDAW is the primary departure point for DWA activities, which are guided by a "National Communications Strategy in Support of the UN Convention on the Elimination of All Forms of Discrimination Against Women". The DWA has helped to popularise CEDAW by distributing a simplified illustrated version of the convention translated into Namibia's seven most commonly-used languages.

5. To implement and monitor CEDAW more effectively, the DWA has established a network of nine gender sectoral committees to bring together NGOs and government representatives around specific areas of concern. Each of these committees is represented on the Gender Network Co-ordinating Committee which meets quarterly and plays an important advisory role. Broader input on gender policy is solicited through an Annual Programme-Sharing Forum which meets annualy and is attended by representatives of the nine gender sectoral committees, government officials and community leaders from each of Namibia's 13 regions. The DWA is working through these structures to formulate a national gender policy and a plan of action.

6. The Law Reform & Development Commission, a statutory body charged with overseeing the law reform process, has established a Women & Law Committee to give special attention to law reform on gender issues. The capacity of the commission is limited by a staff shortage, however, in addition to advising on various legislative reforms. In performing its duties it has initiated one important piece of legislation for women - the Married Persons Equality Bill, which will remove points of discrimination in respect of civil and customary marriage.

7. In general, Namibia's various ministries are gradually moving away from a tendency to compartmentalise "women's issues" towards a more integrated approach to gender policy. For

example, some ministries have improved their capacity to generate gender-disaggregated statistics while others have established specific structures with a focus on gender concerns. The treatment of gender issues is uneven across different sectors, however, pointing to a need for centralised watchdog mechanisms with sufficient status and power to carry out meaningful monitoring. While attention is given to gender in the latest National Development Plan, there there is also a need for more consistency and greater specificity.

8. Monitoring of the implementation of CEDAW could potentially be carried out by the consultative structures which the DWA is in the process of initiating and developing. Preparation and discussion of Namibia's first country report under CEDAW has also functioned as a form of monitoring, but there is a need for a more formalised approach. Consideration is being given to re-constituting the Gender Co-ordinating Committee as a statutory body with clear duties and powers and a permanent support staff, along the lines of Namibia's existing Labour Advisory Council.

9. In theory, individual women who have suffered discrimination may approach the courts or the Ombudsman, who is an independent government official who is responsible for investigating such complaints. However, these avenues are seldom utilised by women in practice, pointing to a need for more public education and outreach.

10. The implementation of CEDAW in Namibia will be carried out in tandem with the implementation of the Global Platform for Action agreed upon at the Fourth World Conference on Women held in Beijing in 1995. As in the case of CEDAW, implementation of the Global Platform of Action will be spearheaded by the DWA working through the nine gender sectoral committees, and monitoring on both fronts will be carried out by a single statutory body. Government action to implement the Beijing commitments will be complemented by the activities of the NGOs which will be looking into different areas such as empowernment of rural women, girl child, violence against women, women and health to name just but a few.

PART II

ARTICLE 1: The Definition of Discrimination

1.1 This section of the report quotes the provisions of the Namibian Constitution which are most relevant to the implementation of CEDAW: Articles 10 (Equality and Freedom from Discrimination), 14 (Family) and 23 (Apartheid and Affirmative Action), as well as certain portions of Article 95 (Promotion of the Welfare of the People).

1.2 Sex discrimination is explicitly forbidden by the Namibian Constitution. Because few court cases have dealt with this provision, it is not yet clear whether this constitutional prohibition applies to all actions with a discriminatory effect, or only to purposeful discrimination. However, Namibian laws and policies have generally clearly taken a broad view of what constitutes discrimination.

1.3 The Constitution provides that racial discrimination may be made a criminal offence, and Parliament has implemented this provision by enacting a statute which sets forth specific penalties for certain forms of racial discrimination. There is no analogous enforcement mechanism for sex discrimination. This distinction is justified by the role of racial discrimination in Namibia's apartheid history, but it may be necessary to explore similar practical mechanisms to prevent sex discrimination in future.

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ARTICLE 2: Policy Measures to Eliminate Sex Discrimination

2.1 The Constitution forbids sex discrimination by both public and private bodies. Women who experience such discrimination may seek help from the courts or from the Ombudsman. At a more structural level, the Department of Women Affairs is in the process of formulating a national gender policy and the Law Reform & Development Commission bears responsibility for supervising law reform to remove all existing legal discrimination against women. Although sex discrimination has not yet been totally eradicated in either general law or customary law, action in both of these areas is underway.

2.2 Article 2 of CEDAW also relates to penal provisions affecting women, which is an issue with several facets. (a) *Women as offenders*: Although no comprehensive data is available, infanticide appears to be a serious social problem which warrants further investigation and action. It is also necessary to re-examine the laws which currently criminalise abortion, although there is no consensus among Namibian women on this issue. (b) *Women as victims*: Many of Namibia's existing laws on sexual offences are based on stereotyped and discriminatory attitudes about men and women. Reforms in this area will soon be forthcoming. (c) *Women in prison*: Only about 4% of Namibia's total prison population consists of women. The condition of women prisoners has been monitored by the DWA, which has mobilised various ministries and NGOs to address complaints of women prisoners.

ARTICLE 3: General Protection of Equal Human Rights and Fundamental Freedoms

3.1 This chapter of the report focuses on violence against women, since freedom from the threat of violence is a necessary precondition for the enjoyment of all other fundamental human rights and freedoms. The incidence of violence against women is also an indicator of the degree to which women lack meaningful gender equality.

3.2 Reports of rape and attempted rape are increasing each year, rising from 564 in 1991 to 741 in 1994. These figures probably represent only a small proportion of the rapes which actually occur as tradditional practices and the long distances to police stations, prevent people to report such cases. There are many aspects of the current law on rape which are discriminatory and ineffective, and a wide range of Namibian groups support law reform in this area. For example, there have been many calls for heavier sentences for rapists. The Government acknowledges the need for urgent action on rape law, and work aimed at law reform is already underway. One rule of evidence in sexual offence cases has already been found by the High Court to be irrational and probably unconstitutional. The role played by customary law tribunals in resolving rape cases also warrants re-examination.

3.3 Other sexual offences, such as unlawful sexual activity covered by the Combating of Immoral Practices Act, are being re-defined to eliminate discrimination against boys, men and female prostitutes.

3.4 Sexual harassment in the employment context is forbidden by the Labour Act, but women still need to be encouraged to speak out on this issue.

3.5 Little information is available on record on the incidence of domestic violence, but this is known to be a widespread and serious problem. The existing legal approaches to domestic violence are admittedly inadequate. There is noted increase in the cases of women murderd by their partners (femicide). More research is needed to guide law reform and policy formulation in this area.

3.6 Anecdotal evidence indicates that women are all too frequently the targets of more generalised/killed violence. Patterns of violence in Namibia must be more closely examined to analyse and address this problem.

3.7 In an initiative which is unique in Africa, the Government has responded to the problem of violence against women and children by establishing a network of Women and Child Abuse Centres which provide a sensitive and integrated response to the victims of violence and abuse. Three pilot centres in Windhoek, Keetmanshoop and Oshakati handled some 250 cases in 1995. There are long-term plans to establish other such centres, and to consolidate and expand the services which they provide. The data collected by these centres should also aid more detailed analysis of the incidence of violence against women and children and thus lead to improved government and police responses.

3.8 One of the gender sectoral committees established by the DWA to encourage co-ordinated action by government and NGOs is in the process of formulating policy recommendations on violence against women and children.

ARTICLE 4: Affirmative Action

4.1 The Namibian Constitution authorises affirmative action for women without requiring the enactment of such measures. A substantial number of post-independence statutes have implemented affirmative action, which has generally taken two forms: (a) provisions which ensure the presence of women on important decision-making bodies; and (b) general authorisations for affirmative action in specific fields, which could be used as a basis for affirmative action for women.

4.2 Affirmative action in employment is addressed in a policy document which is currently being circulated by the Ministry of Labour & Human Resources Development. After further consultation, this policy is expected to form the basis for legislation implementing affirmative action for women and other targeted groups in the labour market. Affirmative action measures will include the removal of employment barriers, positive steps to encourage the employment and advancement of members of the targeted groups, and reasonable job accommodation measures. While quotas will not be utilised, numerical goals and timetables will be used to measure progress. The implementing legislation will probably be administered by an independent agency representing the interests of employers, employees and members of the targeted groups.

4.3 Affirmative action for women in Namibia has also taken the form of special attention to the inclusion of women and women's concerns in policy formulation and programme implementation. Some individual ministries have provided outstanding examples of gender-sensitive approaches, but there is still a need for a more consistent and comprehensive emphasis on women.

4.4 At the 1995 Fourth World Conference on Women in Beijing, Namibia was instrumental in focusing the world's attention on the "girl child". Following on this, the NGO Preparatory Committee which mobilised NGO participation at Beijing has developed a proposal for affirmative action for the girl child which complements the government initiatives on affirmative action.

4.5 Various forms of maternity protection have been implemented, including 12 weeks of maternity leave and income support during the leave period. These measure support affirmative action for women by ensuring that they are not unfairly disadvantaged in the labour market by their childbearing role. The labour law guarantees that a woman on maternity leave will mantain her job and level thereof.

ARTICLE 5: Sex Role Stereotyping

5.1 Men still tend to dominate women in the family context, and male control is reinforced by religious beliefs, cultural practices and remaining inequities under both general and customary law.

5.2 Namibian culture is characterised by reticence on issues pertaining to sexuality, which contributes to the incidence of unwanted teenage pregnancy and sexually-transmitted diseases. There is an urgent need for increased public education on such matters, including an emphasis on women's right to dignity and especially women's right to say "no" to sex.

5.3 Namibian women are commonly thought of as "mothers". This strong stereotype makes it difficult for women to choose other paths, and can best be countered by the increased presence of women in political and public life to serve as alternative role models for young women.

5.4 Namibia is in the process of taking steps to increase gender-sensitisation in the educational system. For example, school principals have been targeted by the gender sectoral committee on Education, Training and Employment for a series of regional gender workshops, and the DWA helped to facilitate a gender-sensitisation workshop for government personnel involved in curriculum development. Efforts such as these should be continued in future.

5.5 Gender stereotypes continue to affect the relative educational opportunities of boys and girls, especially in the rural areas, and the course and career choices of young learners. Adult education is also affected. For example, informal training programmes for women tend to highlight typical "female" tasks such as sewing. It has also emerged that the high number of women facilitators in the National Literacy Programme has discouraged men from participating. Here again, increased visibility of women in a range of careers may help to bring about changes in attitudes.

5.6 The Namibian Broadcasting Corporation has made efforts to ensure that women are well-represented on panel discussions and other current affairs programmes, and to give prominent coverage to topical gender issues. However, gender stereotypes are still evident, particularly in advertisements, and the adoption of an advertising code which addresses this issue should be considered. The print media has given increased attention to gender issues related to violence against women since independence. The Government is currently in the process of drafting new legislation to regulate pornography in all its forms, and particularly its availability to children.

5.7 The "Miss Universe" beauty pageant was hosted by Namibia in 1995, with the aim of increasing Namibia's international profile and stimulating tourism. Some members of the public criticised government expenditure on this event, alleging that it reinforced negative gender stereotypes. The debate on this topic may have contributed to a more critical public analysis of gender roles. In addition, alternative views of women were promoted at the time through events such as women's art exhibitions and a series of television programmes on issues related to women and development.

ARTICLE 6: Prostitution and Trafficking in Women

6.1 Prostitution is governed in Namibia by the Combating of Immoral Practices Act which prohibits the keeping of brothels, the procurement of prostitutes, soliciting by prostitutes, living on the earnings of prostitution and the enslavement of women for sexual purposes. There are few

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arrests for prostitution-related offences in practice, although prostitution is practised by children and adults of both sexes, often out of financial desperation. The Combating of Immoral Practices Act should also be amended to remove sex discrimination in the form of protection against abuse which is provided for women and girls but not for men and boys.

6.2 Under existing law, there are very strict limitations on eligibility for inter-country adoption. Some relaxation of the existing rules is being considered, but a range of safeguards will remain in place to protect the best interests of the child and to ensure that inter-country adoptions do not become avenues for trafficking in young women.

ARTICLE 7: Women in Political and Public Life

7.1 Under Namibia's Constitution, women and men have equal rights to participate in political and public life, including equal rights to vote, to hold office, to form associations and to practise any profession or carry out any occupation. The only legal disability facing women in this regard is the common-law concept of "marital power" which forces many women to obtain their husbands' permission before being able to become a trustee or the director of a company. This disability will be removed by the Married Persons Equality Bill which is before Parliament at the time of writing.

7.2 There are at the time of writing 13 women among the 72 voting and 6 non voting members of the National Assembly (16,7%) and one woman among the 26 members of the National Council (3,85%). Although these numbers are small, it must be noted that the percentage of women in the National Assembly has more than doubled after the second election of that body in 1994. The failure of political parties to nominate more women as candidates stems in part from the continuing male dominance of party structures, and may also arise from public reservations about the suitability of women for political positions. This is compounded by lack of confidence and security among women.

7.3 Women constitute almost one-third (31,49%) of the membership of local councils which were elected in 1992. The Local Authorities Act required that all political parties place a specified number of women on their party lists. This affirmative action provision will not apply to the next local authority elections, which will be held on a constituency basis. However, the definition of "political party" for the purposes of local authority elections is broad enough to enable organisations particularly concerned with gender issues to field candidates if they wish.

7.4 While the presence of women in decision-making positions in government has improved greatly over pre-independence levels, women are still seriously under-represented in senior positions. Women throughout the public service remain clustered in less influential positions which command lesser incomes. While the Public Service Commission is already conscious of the need to address the existing gender imbalances, it is likely that more formal affirmative action measures will be implemented in future. Women constitute 12% of it management position in government.

7.5 Women are also under-represented in bodies involved with law enforcement and legal representation, such as the Namibian Police and the Prisons Service. Though there is a gender committee if the Ministry of Defence, the Defence Force does not keep gender-disaggregated statistics. There is not a single woman judge in Namibia, but the Ministry of Justice has made a conscious effort to increase the number of women magistrates since independence. Furthermore, even though women are under-represented in Namibia's legal profession, a substantial proportion of state prosecutors and state advocates are women.

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7.6 Traditional authorities and traditional courts are still dominated by men. However, some reforms are underway in some communities where women and men are trained as community legal activators and therefore allowed to present their cases in the traditional court. The Government has taken several steps to address this imbalance. For example, the DWA has facilitated a series of gender-sensitisation workshops for community leaders, including traditional leaders, in different regions. The newly-enacted Traditional Authorities Act includes an affirmative action provision which encourages traditional authorities to promote women to positions of leadership. Traditional leaders in at least one community have adopted innovative practical approaches to increasing women's participation in this sphere which could serve as a model for other communities.

7.7 Women are well-represented in the print media, among employees in general and in senior management positions. The broadcast media is less well-balanced, with women being totally absent from top management position and present only in small numbers in middle management posts. However, gender-related issues have received increasingly prominent coverage since independence in both the print and broadcast media. The DWA recently sponsored a workshop organised by the Namibia Media Women's Association to explore strategies for empowering women employed in the media and to develop mechanisms for monitoring the media's portrayal of women.

7.8 Women are not well-represented in decision-making positions in the private sector. For example, not a single Namibian woman is registered as owning a large company or as being a shareholder in a large commercial concern because of the law. This problem will be tackled in a far-reaching manner by the proposed affirmative action legislation. A Co-operatives Bill which will soon be before Parliament also includes affirmative action provisions to ensure that women play a role in management. The DWA has focused on capacity-building through intensive training programmes aimed at helping women in small enterprises to move into larger business ventures. The DWA has also facilitated the launch of a Namibian Women's Business Association and provided funding for selected business projects for women. In addition, several NGOs have programmes designed to support business and professional women. The position of women in the private sector should be assessed over time to gauge the success of the various steps aimed at increasing women's involvement in entrepreneurial activity.

7.9 Although women comprise about 30% of the membership of the National Union of Namibian Workers (NUNW), Namibia's largest trade union federation, they are under-represented in trade union structures. Women are sometimes more difficult to organise because of their family responsibilities. Furthermore, some of the most well-organised industries, such as mining and transport, are characterised by a predominance of male employees. The NUNW has a Women's Desk which aims to promote women's participation in union activities, and in the "Annual Southern Africa Trade Union Women's Forum". There may be a need for more affirmative action for women in this sphere, following the example set by the Namibian National Teachers' Union which holds regular seminars to empower its women members thorough information-sharing, confidence-building and strategising around gender issues.

7.10 There are only a few Namibian women in church leadership positions. Biblical teachings are often cited in political debate to justify the continued subordination of women, especially within the family, although some church leaders have given strong support to women's issues. The Council of Churches in Namibia in establishing a women's Desk in 1988 has encouraged and supported women to tackle issues of their concern in church and society. CCN has also introduced the Wkorld Council of Churches Ecumenical Decade 1988-1998: Churches in Solidarity with Women, with an emphasis on empowering women in the Solidarity with Shortly after independence, the DWA facilitated the establishment of the Ecumenical Women of Namibia (EWON), a group which has drawn together women from over 74 denominations to

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discuss strategies to address the social problems confronting their communities. It was at an EWON conference in 1992 that CEDAW was signed by the President of Namibia, His Excellency Sam Nujoma.

7.11 Although the NGO community is generally male-dominated, there are numerous NGOs and community-based groups which focus on gender issues. A large contingent of NGOs joined forces to prepare for the Fourth World Conference on Women in Beijing, and implementation of both CEDAW and the Beijing Global Platform for Action will take place through joint and complementary initiatives of government and NGOs.

ARTICLE 8: International Representation

8.1 While only two of Namibia's 17 foreign missions are headed by women, women constitute 42,7% of all foreign mission staff. The Ministry of Foreign Affairs does not create joint postings for spouses, but such postings are possible where both spouses are already employed by the ministry. The ministry's only nominee to the United Nations system since independence was a woman. Capacity-building programmes facilitated by the DWA should help to increase the pool of women who are qualified for international postings.

8.2 The participation of women in international delegations and conferences depends primarily on whether or not they possess the necessary expertise. The difficulty of obtaining information about the gender compositions of international delegations selected by various ministries indicates the need for more conscious attention to the gender balance of such delegations.

ARTICLE 9: Nationality

9.1 Namibia's rules on nationality are completely gender-neutral, and there are no reports of any discrimination against women in respect of the acquisition or loss of citizenship.

9.2 Although some problems have been experienced in respect of the administration of the laws pertaining to illegal aliens, these have not been gender-related in any way.

9.3 Gender-disaggregated statistics on applications for refugee status are not available. In February 1995, the population of Namibia's sole refugee camp comprised 557 men and 452 women. Schooling is made available to both boys and girls at this camp. No gender-related issues have been noted with respect to the treatment of refugees or the granting of refugee status.

ARTICLE 10: Education

10.1 The Namibian Constitution guarantees the right of education to all persons and makes education compulsory until the age of 16, or until the completion of primary education.

10.2 Namibia now spends 10% of its GNP on education. However, there are large discrepancies in pupil expenditure between different educational regions which the Government is in the process of redressing.

10.3 The number of pupils in government schools has increased drastically since independence, accompanied by an increase in the number of schools and teachers. This rapid growth places a strain on the Government's ability to provide effective educational services.

10.4 Since independence, the Government has improved its capacity for collecting and analysing gender-disaggregated data, thereby enhancing its ability to make detailed comparisons of the respective positions of boys and girls.

10.5 Nationally, there are no striking gender distinctions in school enrolment, although overall female enrolment shows a small rise between the primary and secondary grades. However, the national totals conceal some important regional distinctions, as female enrolment in certain educational regions declines markedly at the secondary school level.

10.6 Although more girls than boys are promoted overall every year, there is a lower promotion rate for girls in the higher grades. Again, there are marked regional variations here. This data is difficult to analyse, however, because recent research indicates that promotion rates may be a product of non-standardised approaches to grading rather than a reflection of actual student performance.

10.7 Drop-out rates are highest in Grade 10. More girls repeat at this level than boys, in a pattern which holds true across all educational regions. More research must be conducted to determine the reasons for girls having lower promotion rates and higher repetition rates than boys once they reach the higher grades.

10.8 Drop-out rates are affected by the role played by boys and girls in sharing family responsibilities, particularly in the rural areas. Teenage pregnancy is also a major factor in the drop-out rate for girls. In the past, pregnant schoolgirls were usually expelled. They were allowed to seek readmission at a different school after giving birth, but were not guaranteed a right to resume schooling. However, there were usually no negative consequences for schoolboys or school teachers who were known to have impregnated schoolgirls. This situation will be changed by a Policy on Pregnancy Among Learners at Schools, the draft of which is currently under discussion. The policy proposes that pregnant schoolgirls be supported rather than punished, while recommending that serious action be taken against any teacher who engages in sexual relations with a student. Schoolboys responsible for pregnancies will likewise not be punished, but will receive counselling on their responsibility to provide maintenance for the child. In addition, population and family life education are being integrated into primary and secondary school curricula.

10.9 Comprehensive curriculum reform is underway, beginning with the primary school level. A few of the staff members have been trained in gender analysis and constitute a steering committee on gender in education planning charged with monitoring the treatment of gender in the curriculum. However, the Namibia Institute of Educational Development which is responsible for curriculum development is committed to sexual equality and the eradication of all sex discrimination.

10.10 Gender stereotyping persists in respect of course choice at schools, technical institutions and in tertiary education. The Ministry of Basic Education & Culture is in the process of sensitising school principals to this issue, but there is still scope for improved career guidance counselling to alert girls and boys to a wider range of options.

10.11 Several special education programmes have a significant gender impact. For example, in addition to addressing family life education, life skills teachers are presenting material on a range of social and legal issues. The role of these teachers in the schools is in the process of being upgraded.

10.12 The gender-sensitive approach of the National Literacy Programme has successfully reached women, who constitute 79% of all participants.

10.13 Management posts at both the Ministry of Basic Education & Culture and the Ministry of Higher Education, Vocational Training, Science & Technology are dominated by men. Women constitute the majority of school teachers, but most school principals are men. Men also dominate senior posts at the University of Namibia. Affirmative action is needed to involve more women in the planning and implementation of educational policy.

10.14 Gender issues have been a high priority of the Namibian National Students' Organisation (NANSO) since its inception in 1984. This body has a National Women's Sub-committee which convenes an annual Women's Conference to discuss issues relating to the empowerment of women. NANSO has also been instrumental in asserting the right of pregnant schoolgirls to continue with their education.

ARTICLE 11: Labour Development

11.1 According to the 1991 Population & Housing Census, women in rural areas have lower economic activity rates than urban women or men in general. However, this statistic appears to ignore the essential unpaid domestic and agricultural work carried out by rural women. The census classification of homemaking as an economically "inactive activity" also results in an underestimation of the participation of urban women in the labour force.

11.2 A high proportion of women are unpaid family workers or "own account" workers (workers who may be assisted by unpaid family workers but have no paid employees). The largest sector employing women is the agricultural sector, followed by private household employment as domestic workers. Few women are employed in the formal sector overall, although one out of every three government employees is female. Only about 15% of employers are women.

11.3 Women's career opportunities are shaped by their educational levels, combined with a degree of gender stereotyping. Women with no schooling or with primary education only are concentrated in the agricultural sector and domestic work. Women with secondary education are also largely concentrated in these two areas, as well as in the wholesale and retail trade and in education. Women with post-secondary education are mainly found in the education, social, health and personal services industries.

11.4 Urban women have a higher unemployment rate than their male counterparts. The employment rate is also higher for men in regions which are predominantly agricultural. This data indicates that urban and formal sector employment favour males, while women without professional qualifications have difficulty moving beyond traditional agriculture or employment in private households.

11.5 No comprehensive gender-disaggregated statistics are available on the comparative wage and salary levels of men and women. However, women are concentrated in industries and occupations associated with low levels of remuneration, such as agriculture, domestic work and social services. In the public service, women are under-represented in the highest income brackets.

11.6 The Constitution provides for affirmative action for women and commits the Government to ensuring equal pay for equal work, upgrading health standards, encouraging trade unions, ensuring a living wage for all workers and providing maternity and related benefits for women.

11.7 The Labour Act of 1992 sets minimum working conditions, provides a framework for collective bargaining and prohibits discrimination on a number of grounds, including sex.

11.8 In 1994 the President appointed a Commission of Enquiry into Labour-Related Matters Affecting Agricultural Employees and Domestic Employees. The operation of this commission has been deferred indefinitely because of the need to shift funds to emergency drought relief.

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However, it is crucial that this commission reconvene as soon as possible to investigate the living and working conditions of these two vulnerable groups.

11.9 Namibia recently enacted a Social Security Act designed to remedy the fact that most workers are not covered by a comprehensive social security scheme. The act establishes a Social Security Commission which will administer: (1) a Maternity Leave, Sick Leave and Death Benefits Fund; (2) a National Medical Benefit Fund; (3) a National Pension Fund; and (4) a Development Fund to sponsor training schemes for disadvantaged and unemployed persons. The Social Security Commission will also take responsibility for the Accident Fund which finances Namibia's employees' compensation scheme. This scheme has recently been expanded to include domestic workers and other vulnerable occupational groups which were excluded from coverage in the past.

11.10 The Labour Act gives all women who have worked for the same employer for at least one year the right to 12 weeks of maternity leave. Maternity benefits during this period will be provided through the Maternity Leave, Sick Leave and Death Benefits Fund, which is financed by equal contributions from employers and employees. Women will receive 80% of their normal salary while on leave, up to a ceiling of N$3 000. At present, because of concerns about enforceability, the fund covers only employees who work for more than two days a week for the same employer. Because concerns have been expressed about the impact of this policy on domestic workers, expanded coverage should be considered once the fund is fully operational. Women on maternity leave are also protected by provisions in the Labour Act which safeguard employment rights and benefits during the leave period.

11.11 The Labour Act makes no provision for paternity leave, which is a subject of divided public opinion. Further discussion and debate is needed to guide government policy on this point.

11.12 Women are protected against unfair dismissal by the Labour Act, which prohibits discrimination on the grounds of sex, marital status or family responsibilities in all aspects of employment. A female employee may not be retrenched during maternity leave or upon her return, or dismissed on the grounds that she can no longer perform her job, unless the employer has taken all reasonable steps to provide suitable alternative employment. Discrimination on the basis of family responsibilities excludes responsibility to family members other than dependent children and should perhaps be defined more broadly. Where unlawful discrimination occurs, the victim has recourse to a system of labour courts.

11.13 Very few employers offer child care facilities at the workplace, and the costs of available facilities are prohibitive for many working women. Such services are also concentrated in urban areas, leaving rural women with added constraints to participation in the formal labour market. The possibility of introducing incentives to encourage employers to offer child care options at the workplace should be explored.

11.14 The absence of affordable child care options (which sometimes prompts mothers to send their children to live with extended family members) and the absence of child care services at the workplace make it difficult for working mothers to continue breastfeeding. The Ministry of Health & Social Services introduced a Mother-Baby Friendly Initiative in the early 1990s, which is intended to promote good breastfeeding practices through appropriate hospital policies and support from employers. The Labour Act is silent on the issue of breastfeeding. Further exploration is required on what kind of working arrangements - such as periodic work breaks or flexible working hours - would be useful in the promotion of breastfeeding.

11.15 The Labour Act precludes women from night work eight weeks before and after childbirth. The portions of the Labour Act concerning the health and safety of workers have not yet replaced the

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old pre-independence legislation. The health and safety needs of pregnant women, as well as those of both men and women as they relate to reproductive capacity, should be addressed in the forthcoming health and safety regulations.

11.16 The Ministry of Labour & Human Resources Development is in the process of carrying out consultations on a draft policy on affirmative action which will be backed by legislation. The impact of this new policy on women will be assessed once it becomes operational.

ARTICLE 12: Health Care

12.1 At independence, the Government inherited a fragmented, inequitable health system with an emphasis on curative medicine. This system has now been unified under one central authority and is being restructured to improve services to the neediest portion of the population. The major emphasis is on primary health care.

12.2 On average, Namibian women throughout the country must travel for 40 minutes to reach a health care facility. Maternity and family planning services are often not available (or not perceived as being available) at the nearest health facility, thus entailing additional travel time. Although advances have been made in access to health facilities, improvement in this area is still needed.

12.3 Utilisation of antenatal and delivery services is high in Namibia. About 90% of women had access to antenatal services in 1992, and about two-thirds of all babies were delivered in health facilities, most commonly with the assistance of a nurse or midwife. The 1992 maternal mortality rate was about 225 per 100 000 live births.

12.4 The average number of children born alive per woman is 6,1 and ranges form an average of 4,7 in urban areas to 6,8 in rural areas. Fertility rates are generally higher in the north than in the south, and rates fall with an increase in educational attainment. The overall fertility rate is one of the highest in the world, and the Government is committed to trying to reduce fertility rates though public education campaigns and expanded family planning services.

12.5 Infant mortality is 67 per 1 000 live births, and the mortality rate for children under five is 87 per 1 000 and 97 per 1 000 for children under 10. Children born to single mothers have a lower infant mortality rate, probably because of larger intervals between births. Infant mortality decreases where mothers have higher educational attainment, indicating that a general improvement in the position of women should reduce the incidence of infant deaths. The main causes of death in paediatric wards are diarrhoeal diseases, malaria, malnutrition and asthma/bronchitis.

12.6 Average life expectancy at birth is 59,1 years for men and 62,8 years for women, with marked regional variations. The main causes of death in adult hospital wards are pulmonary tuberculosis, circulatory system disease, neoplasms (abnormal tissue growths such as tumours), acute respiratory infection (such as pneunomia), malaria and hypertension (high blood pressure).

12.7 The incidence of reported HIV infection is rapidly increasing. Contrary to the situation in many other developing countries, more men than women are infected in Namibia. The largest number of infected women are in the 25-34 year age group, followed by the 15-24 age group. This age distribution means that there is a heightened chance of HIV transmission through pregnancy and breastfeeding.

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12.8 Teenage pregnancy is common, with about 36% of 18-year-olds and 19% of 19-year-olds either pregnant or already mothers. Early childbearing is more common in urban areas and among teenagers with little or no schooling. These factors point to a need for more family life education in the schools, as well as greater dissemination of such information by health facilities.

12.9 While about 90% of women have knowledge of a contraceptive method, only 41% of all women and 52% of married women have ever used contraception. Contraceptive use is higher in urban areas and among educated women. The 1992 Demographic and Health Survey found that about 23% of all women have an unmet need for family planning services, indicating that access to these services still needs improvement.

12.10 Abortion is illegal except in the case of unlawful sexual intercourse (such as rape or incest) and in certain narrowly-defined situations pertaining to the physical and mental health of the mother or the child. Only a small number of legal abortions are performed each year, most frequently on the grounds of danger to the mother's mental health. The existing procedures are available primarily to educated women and particularly to women with easy access to the Windhoek State Hospital. There is no comprehensive data on the incidence of illegal abortion, but anecdotal evidence indicates that both illegal abortions and infanticide are problematic. More widespread public discussion of this issue is needed to guide government policy-making.

12.11 The Government has initiated a number of programmes aimed at improving public health and life expectancy. Several of these - such as the Maternal and Child Health / Family Planning Programme and the Mother-Baby Friendly Initiative - are aimed directly at women. The impact of programmes such as these on the targeted communities must be monitored and evaluated on an ongoing basis. The women and health network is an NGO initiative to monitor health of women in Namibia.

ARTICLE 13: Economic and Social Life

13.1 Both race and sex discrimination have been removed from Namibia's pension schemes. Men and women are treated equally in respect of old age pensions, disability pensions and pensions to blind persons.

13.2 The Maternity Leave, Sick Leave and Death Benefits Fund established in terms of the Social Security Act draws on mandatory employer and employee contributions to finance benefits during maternity leave, during extended illness and upon the death or retirement of a member. The combination of maternity benefits with other benefits which are available to both men and women should help to mitigate against sex discrimination in the labour market. The operation of this fund should be assessed in future, along with the National Medical Benefit Fund and the National Pension Fund which are being contemplated.

13.3 A limited amount of financial assistance is available to families in need in the form of maintenance grants. Race discrimination and sex discrimination (against men) inherited from South Africa at independence still need to be eliminated from the regulations governing these grants, and they need to be more narrowly targeted at the neediest households. A law which would accomplish these objectives is under consideration by the Ministry of Health & Social Services.

13.4 While commercial financial institutions do not appear to discriminate against women, they fail to keep gender-disaggregated statistics which would enable an analysis of lending patterns.

13.5 The Build Together Programme administered by the Ministry of Regional & Local Government and Housing has been particularly successful in reaching women as recipients of credit for

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housing purposes. This programme also encourages women to form savings and credit schemes to serve their other credit needs.

13.6 NGOs which extend credit to women note that women need loans for projects such as informal sector enterprises, and that women generally evidence excellent repayment records.

13.7 Because of the common-law concept of "marital power", most women married under civil law require the consent of their husbands before they can enter into a loan agreement. Legislation which will abolish the marital power is currently before Parliament.

13.8 Women's access to credit might be improved by a public education campaign on financial options targeted at women.

13.9 Male and female participation in school and national sport is uneven, with women being concentrated in netball while other sports are strongly dominated by men. "Women's sports" also generate less public interest and face a harder struggle to obtain private sponsorship. The recently-enacted Namibia Sports Act incorporates affirmative action provisions, and the impact of these on women should be evaluated in future.

13.10 More women than men are enrolled in formal arts courses in Namibia. In the informal sector, women artists whose work was once relegated to the realm of "crafts" are now being trained and promoted. The Arts Association of Namibia consciously promotes women in the visual arts and has played a leading role in diversifying gallery art to encompass traditional art forms such as basketry, pottery and needlework. Women are active in the performing arts in a variety of groups and fora. Namibian literature is still in a young and developing stage, but several groups have made a point of promoting literary work by women.

13.11 About 46% of Namibia's 43 823 disabled persons are women. Disabled persons face subtle forms of discrimination which is often compounded in the case of disabled women. The Government has several initiatives aimed at disabled persons, including self-help projects, community rehabilitation assistance and special training to help teachers recognise and deal with disabilities. About 7 000 disabled persons were receiving state disability pensions in December 1995, but no gender breakdown of pension recipients was available. The Labour Act forbids discrimination on the grounds of disability, and disabled persons are one of the target groups of the proposed policy on affirmative action in employment. Attention needs to be given to the formulation of new legislation on disability, the accessibility of government buildings to disabled persons and ways to raise public awareness of the rights and abilities of disabled persons.

ARTICLE 14: Rural Women

14.1 Rural women are the largest demographic group in Namibia, comprising one-third of the total population. Despite considerable progress in improving the living conditions of the rural population, rural women are still severely disadvantaged in terms of access to vital resources and services, and are virtually absent from decision-making and leadership structures.

14.2 There are a number of specific government initiatives aimed at the empowerment of rural women. For example, one of the nine gender sectoral committees facilitated by the DWA, the Committee on Rural Community Programmes and the Environment, targets rural women directly in connection with issues ranging form water supply to health. The Ministry of Agriculture, Water & Rural Development has established a Steering Committee on Gender Sensitisation which has taken a lead in providing training in gender issues for agricultural extension workers, and in collecting data on rural women. In addition, the ministry is in the process of soliciting regional input for a Plan of Action to address the needs of women farmers.

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Rural women have also been targeted by several programmes designed to improve household food security. The empowerment of rural women should also be assisted by affirmative action provisions in the newly-enacted Traditional Authorities Act and the proposed Co-operatives Bill.

14.3 Government initiatives aimed at rural women are being complemented by a range of NGO efforts. For example, the churches serve as an important channel for mobilising rural women around gender issues, through the efforts of groups such as the Council of Churches in Namibia, the Young Women's Christian Association and the Ecumenical Women of Namibia. Another example is a current attempt on the part of Government and NGOs which participated in the Fourth World Conference on Women in Beijing to establish a Rural Women's Movement.

14.4 The Ministry of Agricultural, Water & Rural Development is attempting to improve the access of rural women to agricultural extension services by making these services available at decentralised Agricultural and Rural Development Centres, and by training extension workers in gender-sensitive approaches. Other ministries also make use of extension workers. For example, the National Literacy Programme makes use of district literacy officers who have received gender-sensitivity training and have been particularly successful in attracting women to literacy classes. Ongoing assessment of rural women's access to various government services will be necessary to guide future outreach efforts.

14.5 A recent study of community perceptions of social services carried out under the direction of the National Planning Commission found that rural residents report that water services have improved since independence, thereby reducing the time and effort expended by women in water collection. However, rural communities are still demanding increased control over water points, and it will be important to ensure that such empowerment extends to women as well as men.

14.6 While there have been some strides in the introduction of appropriate technology, more can be done to help lighten the workload of rural women. Information from several recent studies and pilot projects can be used to guide developments in this area.

14.7 In some areas, women lack adequate access to land in terms of customary law, while some women lack adequate resources to farm the land. This problem is exacerbated by discriminatory laws relating to marriage and inheritance.

14.8 Both government and NGOs operate loan programmes aimed at rural residents, but these do not appear to be adequate to meet the needs of rural women. Agriculture in most rural areas does not provide a sufficient cash income to cover basic needs, with the result that rural women are often dependent upon male wage earners. Rural women have difficulty finding jobs in the formal sector, and may be constrained from taking wage employment by the absence of child care options. Some women are involved in informal sector activities and small business projects, and the DWA is providing support to selected ventures.

14.8 The Government's National Agricultural Policy acknowledges the key role of rural women in agricultural development and includes plans to improve their position through increased access to extension services, access to credit, secure access to land and expanded opportunities for informal sector activities. The Government is also committed to the formulation of a National Rural Development Policy which will give special attention to women farmers and female-headed households in the rural areas.

ARTICLE 15: Legal Capacity and Domicile

15.1 The age of majority under civil law is 21 for both men and women.

15.2 Women married under civil law are subject to the "marital power" of their husbands unless it has been specifically excluded by antenuptial agreement. Marital power places a woman in a position similar to that of a minor, by giving the husband control of all the property of the marriage and by making it impossible for a woman to sign a contract or bring a court case without her husband's consent. The common-law concept of marital power has also given rise to a number of related statutory disabilities for married women, such as restrictions on the right to own land.

15.3 These discriminatory legal provisions will all be removed by the Married Persons Equality Bill which was placed before Parliament in 1995. The bill will remove marital power completely, making husband and wife equal in the eyes of the law. Couples married in community of property will be required to consult each other on major transactions involving joint assets, although there will avenues of redress where consent is unreasonably withheld. Husbands and wives will have equal guardianship of their children, meaning that guardianship powers can be exercised independently except in the case of important decisions such as adoption, marriage of a minor child or removal of a child from Namibia.

15.4 The Married Persons Equality Bill has inspired heated debate in Parliament. At the time of writing, it had been referred by the National Council to a committee which was planning to hold nationwide hearings to solicit public opinion. The bill is expected to become law during 1996. Its practical impact should be assessed once it has been in place for some time.

15.5 Under existing law, the domicile of a woman married under civil law is the same as her husband's. The Married Persons Equality Bill will make the domicile of the wife, and of any children of the marriage, independent of the domicile of the husband.

15.6 The question of a woman's legal capacity in terms of customary law is more complex. Ages of majority differ in different communities. Women married under customary law may have autonomous decision-making power in some respects, but are often subordinate to their husbands or to other male relatives in important aspects of life. More research is needed to guide policy-making in this area, and the Law Reform & Development Commission has already initiated a long-term research project in this field.

15.7 The sections of the Married Persons Equality Bill which give married women a domicile independent of that of their husbands, and the provisions which make husbands and wives equal guardians of the children of the marriage, have been made applicable to customary marriage as well as to civil marriage.

ARTICLE 16: Marriage and Family Relations

16.1 Both civil and customary marriage take place in Namibia, and the two are often intertwined. For many Namibians, the concept of "family" includes extended family members. Cohabitation, which produces no legal consequences, is not uncommon, and children are frequently born outside of marriage.

16.2 The age of consent for entry into civil marriage is 18 for boys and 15 for girls. This will be equalised at 18 for both sexes by the Married Persons Equality Bill currently before Parliament.

16.3 Men and women also enjoy unequal rights to enter into marriage because of the practice of polygamy, which affects about one out of every eight married women. This is a sensitive issue which warrants further study.

16.4 Both men and women need more public education on the property consequences of marriage.

16.5 The Constitution provides that men and women may enter into marriage "only with the free and full consent of the intending spouses." The Government is not aware of forced marriage as a problem in present-day Namibia.

16.6 Married women have a subordinate legal status under both civil and customary marriage, but the legal position under civil marriage will be rectified by the forthcoming Married Persons Equality Act. Meaningful change in power relations within families will require more than law reform, however. The portrayal of gender roles in the media, in school curricula and on the part of prominent role models are possible avenues for influencing social change.

16.7 Namibia's divorce laws, while not discriminatory, are outdated and in need of reform. Many women have successfully applied for legal aid in divorce proceedings. More information is needed on the dissolution of customary marriages.

16.8 Inheritance under civil law does not involve any overt sex discrimination, but some racial distinctions which survive from the apartheid era must still be eliminated. In some communities, women experience severe discrimination in terms of inheritance under customary law, as the husband's family sometimes lays claim to the house and virtually all of the household assets. This problem is under investigation by the Law Reform & Development Commission.

16.9 Fathers currently enjoy greater powers over children born inside marriage, while mothers have greater rights over children born outside of marriage. Legislation which would equalise the rights of parents in both situations is forthcoming. The proposed Children's Status Act which would address the situation of children born outside of marriage focuses on the rights of the child rather than on the competing rights of the respective parents.

16.10 The Maintenance Act requires that both parents contribute towards the maintenance of a child in proportion to their respective financial resources, regardless of whether the child was born inside or outside of marriage. The act provides a simple, gender-neutral procedure for securing maintenance. Amendments which would improve the practical operation of this act are under consideration by the Ministry of Justice at the time of writing.

16.11 There are some constraints on women's ability to control their own fertility. Abortion is illegal except in certain narrowly-defined circumstances, a policy which calls for further discussion and debate. Women often face social pressure to bear children, and misinformation about contraceptives is prevalent. Nevertheless, the Government's Safe Motherhood initiative has already produced a marked increase in the utilisation of family planning services by women. Further advances can be made through continuing public education, the gradual removal of sex role stereotypes, and general improvements in the position of women. The newly established NAPPA will also apply a major role in this train.

16.12 Marriage does not interfere with women's right to keep their own names if they wish, or to pursue the occupation of their choice. All sex discrimination and discrimination between married and single persons in the tax laws was removed shortly after independence.

16.13 All minors (persons under the age of 21) need the consent of their parents to enter into civil marriage. Boys under 18 and girls under 15 (soon to be changed to age 18 for both sexes) also

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need government permission. There is no minimum age for marriage under customary law, but recent studies show that women's age at first marriage is tending to rise.

16.14 There is no requirement that customary marriages be registered. Such registration will be made compulsory in order to bring Namibia into full compliance with CEDAW.

CONCLUSION

As a young nation, Namibia has made great strides in improving the position of women. The Namibian Constitution gives equal protection to the fundamental human rights of men and women, forbids discrimination on the basis of sex and specifically authorises affirmative action for women.

Since independence, the Government has made considerable progress in transforming ethnic-based systems of health and education into new forms which serve men and women of all races equally. Employment and labour relations are now governed by a new legal framework which gives special attention to sexual equality and maternity protection, and a system which will provide income support to women on maternity leave has been implemented. Law reform which will remove remaining legal disabilities for women is underway, and a Married Person Equality Bill which addresses some of the most serious problems in this regard is already before Parliament.

Women are still under-represented in public and political life, but creative approaches to affirmative action have been employed to help remedy this in certain spheres. Women are gradually becoming more visible in public positions, as well as in the media and in the arts. Gender-sensitisation and capacity-building for women are taking place on various fronts, as a means of helping to advance the position of women and to improve the provision of services to women.

The Government is in the process of formulating approaches to some of the most serious problems facing women, such as teenage pregnancy and the need for affirmative action in employment. Action is still required to address the empowerment of rural women and the grave problem of violence against women.

The implementation of CEDAW is being spearheaded by the Department of Women Affairs in the Office of the President, which has established nine gender sectoral committees to co-ordinate the efforts of government and NGOs in specific sectors. These nine committees are represented on a Gender Network Co-ordinating Committee which plays an important role in the development of national gender policy. However, this body will need more formal powers and an increased status if it is to play an effective monitoring role on gender issues.

It will take time to transform Namibia into a society characterised by meaningful sexual equality on all fronts, and the Government cannot accomplish such a change on its own. However, Namibian women are increasingly finding new ways to organise and to make their voices heard, and the promises of the Namibian Constitution and CEDAW are progressively being realised.

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PART 1

Introductory Sections

A. GENERAL, SOCIAL, ECONOMIC, POLITICAL AND LEGAL STRUCTURES

General

Namibia is situated in the south-west corner of Africa, and shares borders with Angola and Zambia in the north, Zimbabwe at the eastern end of the Caprivi Strip, Botswana to the east, and South Africa in the south and south-east Atlantic Ocean. Namibia straddles the Tropic of Capricorn, which divides the country in almost equal halves.

The landscape of approximately 824 269 square kilometres is marked by huge sand dunes, rock outcrops, a desolate coastal belt, monotonous plains and shrubland. There are two deserts: the Namib along the Atlantic coast, and the Kalahari which extends across the northern and eastern parts. There are perennial rivers only on the northern and southern borders and only 32 per cent of the country receives more than 400mm of rain per annum.

Namibia (known as South West Africa until 1990) was formally colonised by Germany in 1884 and this colonisation lasted until 1915 when the colonial Government was defeated by the Union of South Africa during the First World War. In 1920 the League of Nations entrusted Namibia to South Africa as a Class C mandate, which required that the country be administered in such a way as to "... promote to the utmost the material and moral well-being, and the social progress of the inhabitants ..."[1]

In 1945, the League of Nations was succeeded by the United Nations which requested South Africa to place Namibia under its trusteeship. Instead, South Africa refused and systematically introduced the policy of apartheid in the country. The pillars of this policy were the continued appropriation of African land for white settlement through forced removals, the confinement of Africans to small barren reserves consolidated into tribal-based "homelands", the denial of political rights to the African population and the reservation of white-collar and professional employment opportunities for people mainly of European descent.

This racially-based land policy was meant to be the supporting pillar of a colonial economy which relied heavily on both the migrant labour system and the under-development of the family- based "subsistence production" in areas reserved for African settlement. Thus the classical role of the reserve economy and the migrant labour system based on contract employment was to supplement the wages of workers, support them during old age and sickness, and perpetuate the conditions necessary for the reproduction of a cheap labour system. Until its abolition in the early 1970s the contract labour system was applicable only to the northern regions and hence its negative impact has been the heaviest there.

In the early 1960s national liberation movements emerged and took up the plight of Namibia's oppressed people, petitioning the United Nations Organisation (UNO) and other similar international bodies formed in 1960. In 1966 the South West Africa People's Organisation (SWAPO) launched the armed struggle in side Namibia and from exile and intensified its lobbying efforts to gain an internationally support for the liberation struggle to bring about independence for the country. In 1977 these intensive diplomatic campaigns convinced the five western members of the UN Security Council to initiate negotiations between SWAPO and South Africa aimed at reaching a peaceful settlement of the Namibian question. On 29 September 1978 the UN Security Council adopted Resolution 435. In terms of this resolution the UN Security Council established a UN Transitional Assistance Group (UNTAG) to supervise a ceasefire and monitor the process of decolonisation.

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[1] P. Katjavivi, *A History of Resistance in Namibia*, Paris and London, 1988, p.13.

Due to the east-west ideological conflict and superpower hegemonic politics at the time, independence for Namibia was held hostage by extraneous regional issues and hence UN Resolution 435 was not implemented until 1989. Eventually, both the changing military situation in Southern Africa and the collapse of the USSR and its East European communist allies created a new global security context characterised by inter-state co-operation, thus paving the way for the implementation of Resolution 435. On 21 March 1990, after the successful implementation of Resolution 435 as supervised by UNTAG and other international observers, Namibia officially became an independent state after more than 100 years of colonialism.

Namibia is a country with a rich heritage of cultures and traditions. Its diverse ethnic groups include, among others, the Basters, Caprivians, "Coloureds", Damara, Herero, Kavango, Nama, Owambo, San and Tswana peoples; and a range of people of European descent. Although English is the official language, it is spoken at home by only 0,7% of the population. The largest language group, Oshiwambo, is spoken by about 51% of the total population at home. Ninety per cent of Namibians are Christian. The main denominations are Lutheran (48%), Roman Catholic (32%), Dutch Reformed (10%), Anglican (8%) and Methodist (1.6%).[2] There are also numerous small independent African churches, such as the Zionist Christian Church (ZCC).

Social structures[3]

The total population of Namibia at the time of the Population and Housing Census conducted in 1991 was 1 409 920,[4] comprising 686 327 males and 723 593 females, giving a sex ratio of 95 males per 100 females. The inter-censal annual population growth rate was 3,1% between 1981 and 1991. About 28% of the total population live in urban areas. The majority of females (73%), relative to their male counterparts (71%), live in rural areas. About 52% of the total population in rural areas are females. This slightly skewed urban-rural sex ratio is the result of a comparatively large proportion of men migrating to urban areas in search of employment. At 51% of the total urban population, males are slightly in the majority.

The average population density in Namibia is 1,7 persons per square kilometre. Some regions have more males than females, such as Karas, Otjozondjupa and Khomas. The northern region of Omusati has the lowest male ratio with 79 males per 100 females, whereas its neighbour, the Ohangwena region, has 91 males per 100 females. These differing sex structures are the result of the historically uneven incorporation of the various regions within the labour market characterised by predominantly male migration to regional centres of formal economic activity.

About 42% of the Namibian population are under 15 years of age, 53% are aged 15-64 and 5% are 65 years or older. In conformity with all other developing countries, Namibia has a very youthful population, with two out of five persons under the age of 15. Some regions have comparatively fewer persons in the younger age group, such as Khomas and Karas, whereas the converse is true for other regions, such as Ohangwena and Omusati. This population structure is the product of the age-selective nature of the migration process. The age-sex breakdown of the Namibian population is as follows: 43% of males and 41% of females are aged less than 15, whereas 4% of males and 5% of females are aged 65 and over. About 53% of males and 54% of females are in the 15-64 age group.

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[2] CIDA, *Country Report - Namibia*, 1990, p.3.0.

[3] The statistical data for this section has been obtained from CSO, *Population and Housing Census (Basic Analysis with Highlights)*, 1995. In cases where an alternative source was used, appropriate reference is made to this effect.

[4] This figure and all other census data exclude Walvis Bay, as the enclave was still under South African administration at the time of the census. However, the *Income and Expenditure Survey* data includes Walvis Bay.

The average household for Namibia consists of about 5,2 persons, although there are regional variations. Generally, urban households are smaller than rural households. This situation is a consequence of the prevalent social phenomenon of maintaining two households - usually a practice of migrants who spend most of the year working in urban centres far away from wives and children in the rural areas. It is also due to higher fertility rates in rural areas as well as to the fact that the young and very old are usually 'dumped' in the rural areas, which significantly increases the burden on women in caring for these groups.

According to the Population and Housing Census there were about 254 389 households in Namibia during 1991. Of these, approximately 61% are headed by a male and 39% by a female. Over 60% of households with no employed member are headed by a female as against 39% for all households. Female-headed households make up 43% of rural households as compared to only 31% of urban households.[5] Again this is an indication that the migration process is sex-selective as women tend to remain behind in the rural areas. Lifetime migration between regions (i.e. permanent settlement away from the place of birth) is uncommon in Namibia.

There are mainly two types of household structure in Namibia: those consisting of single persons and those consisting of couples. Both types may also accommodate a range of other persons related to household members in different ways. There is a high incidence of the "extended family" in both rural and communal areas. An "extended family" may consist of the following: own children's spouses, children's children, parents or spouse's parents, and other relatives. The marital status of the Namibian population aged 15 years and above (including customary law unions) is as follows: never married (50%), married legally/customarily (30%), married consensually[6] (12%), divorced or separated (3%) and widowed (4%).

The average number of children born alive per woman in Namibia is 6.1. This average masks some significant variations, however. For example, in contrast, fertility rates are substantially lower (4.7) in urban areas. This difference could be due to the family planning services readily available in towns. It is also possible that those women from highly urbanised ethnic groups, such as "whites" and "coloureds", bear fewer children and hence this comparatively decreases urban fertility levels. There are also marked regional differences ranging from 3,8 in Karas to 7,7 in Ohangwena. It has been established by the Namibia Demographic and Health Survey (1992) that women in the southern regions compared to those in the northern regions have low fertility and a high level of contraceptive use.

The infant mortality rate per 1 000 live births is 67 and the proportion of children dying before the age of five is 87 per 1 000. In urban areas infant mortality is 55 per 1 000 and in rural areas 72 per 1 000. This huge gap could be explained in terms of the inadequate health facility and service provisions in rural areas in comparison to urban centres. Infant mortality rates in Namibia are lower than those in most other countries in sub-Saharan Africa, but higher than Botswana's rates and almost the same as those of Zimbabwe.[7] Life expectancy at birth for males is 59,1 years and for females 62,8. The Caprivi region has the lowest life expectancy at 51,4 for males and 54,8 for females, whereas Khomas has the highest life expectancy for both sexes. Against all odds, it is clear that women across the board have the highest life expectancy at birth.

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[5] The 1991 Population and Housing Census defined the head of household as the person, male or female, who was recognised as such by the household members. If this head of household was absent on census night, the person (male or female) who took charge of the household during his/her absence was regarded as the head of the household: Republic of Namibia, *1991 Population and Housing Census, Statistical Tables, Volume I*, pp.xiv-xv.

[6] This means that persons live together as husband and wife without performing any legal or customary ceremony.

[7] *Namibia Demographic and Health Survey 1992* (Summary Report), May 1993, p.11.

There are about 43 823 disabled people in Namibia - amounting to 3,1% of the total population. Of these, 54% are males and 46% females. Impaired limbs and blindness constitute 35% and 29,8% of the total respectively and are the most common forms of disability. The comparatively high prevalence of disability from impaired limbs is a result of the approximately 24-year war of liberation. This assertion can be corroborated by the fact that the then "war zone" located in the far northern regions has the highest number of disabilities. The relationship between a person's gender and disabled status, and the possibility of being discriminated against, has not yet been ascertained. In this respect further research is needed.

Economic structures

The economic structure of Namibia is characterised by a dominance of primary industries. The key industry is mining, which contributes about one-third of the GDP and approximately 75% of annual export revenue.[8] The Namibian economy is inherently weak, being primary sector based: mining, livestock and more recently fishing, are overwhelmingly export oriented industries. About 57,4% of the country's GDP is exported and earns hard currency, although a significant portion of this does not return to Namibia.

Economic prospects in Namibia are largely influenced by the international economic environment which is characterised by high interest rates, weak prices for primary commodities, and economic recessions. Due to its dual dependence on export and imports, the economy is influenced by both South African and international business cycles. The Namibian economy is also susceptible to climatic uncertainty accompanied by periodic drought, like the devastating drought of 1991/92 and that of 1994/95.

The Namibian economy has developed through three distinct phases since the mid-1940s: From the mid-1940s to the late 1950s the economy grew at a rate of 10,6%. During the next 10 years the rate decreased to 6,1% and until 1980 decreased even further - at times dipping to -7% - but it rose again slightly as from 1985 to reach 2% in 1988.[9] The economy has performed better since independence in comparison to the 1980s, and between 1990 and 1993 real GDP grew at an average of 2,2% per annum, with a GDP growth rate of 5,5% for the first quarter of 1994.[10] Since the annual population growth rate is about 3,1%, the growth in the GDP has to be above this in order to sustain employment creation and the delivery of basic services.

Mining has been the backbone of the Namibian economy, although since the 1980s this industry has experienced perpetual crisis. It is important in terms of national value added, exports and tax revenue. Although agriculture only contributes between 9-12% of the overall GDP, 70% of the population directly and indirectly Namibian depend on this sector of the economy for their livelihood.[11] The industrial sector remains under-developed due to the small size of the local market, low buying power and high transport costs, among other factors.

Manufacturing is mainly concentrated in urban areas, predominantly in the central, south and western parts of the country. The urban concentration of industries has given rise to the entrenchment of rural to urban migration of people, mainly young males, in search of employment opportunities. Thus the rural areas are mainly populated by females, children and the aged. The construction, water, electricity and gas industries are also under-developed. Due to the dependence of Namibia on the extraction of raw

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[8] *Namibia Trade Directory 1993 94*, p.5.

[9] F. Tjingaete, "Namibia's Economy", in *Optima 37(2)*, Anglo-American, Johannesburg, 1989, p.71.

[10] Bank of Namibia, *Quarterly Bulletin 2(1)*, January-March 1994, p.1.

[11] CIDA, *Country Report - Namibia*, 1990, p.6.3.

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materials, its commerce, trade, finance, as well as social service sectors are also under-developed. However, since independence the Government has placed housing, education, health and social service provision high on its list of priorities.

In 1992 agriculture contributed 9.2% of the Namibian GDP (at factor cost), whereas mining and quarrying contributed 20.1%. On the other hand, the manufacturing and wholesale/retail contribution to real GDP at factor cost was 6.1% and 12.2% respectively. At slightly more than a quarter (25.2%) of the overall GDP, public administration (general government) was the single largest contributor. Financial institutions contributed about 8.2% to the GDP.[12]

In 1991, about 388 014 of adults aged 15 years and above were formally employed.[13] Of these, about 44% were female in contrast to 56% who were male. Of those formally employed, almost 40% were employed in the private sector, 19% were employed by the Government and 21% were unpaid family workers. Around 20% of all employed people were own account workers,[14] while 2% were employers. Agriculture alone employed about 180 000 people or 46% of all people employed. After agriculture, the largest numbers of people are employed in the public and private service sectors (28%); manufacturing, including mining, gas, water, electricity and construction (15%); and wholesale and retail trade (9%). About 81% of the labour force is employed, with 19% unemployed.[15] The mining industry alone employed almost 15 000 people, which is about 4% of all employed persons.[16]

For historical reasons the Namibian economy is tightly linked to that of South Africa. For example, about 62,3% of all Namibian consumer goods are imported and of these, about 85% are from South Africa. In contrast, just 16% of its exports are destined for South Africa.[17] Namibia is also a member of the South African Customs Union (SACU), which together with Botswana, Lesotho and Swaziland constitutes a single common market. It is also part of the Rand Monetary Area which links South Africa, Lesotho and Swaziland under one monetary zone. In September 1993, a national currency, the Namibian Dollar (N$), was introduced with an exchange rate on par with the South African Rand (R). Namibia is also a member of the Southern African Development Community (SADC) which seeks to develop economic integration of regional states by improving trade, transport and communication links.

The inherent economic constraints could be alleviated by implementing a number of structural changes. Among others, this will entail making the economy more equitable, diversifying its components, reducing its vulnerability to outside forces, and keeping a larger margin of its profits and savings within the country. To this effect the Government passed the Investment Act of 1990 as a measure to attract foreign capital and revitalise the economy, as well as create employment opportunities. This Act guarantees foreign investors the right to freely repatriate their capital and profits. Currently the Government is also establishing Export Processing Zones (EPZs) to promote employment creation. Internationally, EPZs are associated with low wages and restrictions on the right to strike. The global trend is to feminise employment opportunities within these zones and thus, arguably, to contain worker militancy. Although, the EPZ concept in Namibia is still in its infancy the current employment of female labour in Walvis Bay fishing factories could be a strategy in this direction.

There are wide disparities and structural inequalities in Namibia in terms of ownership of major economic resources, income distribution and expenditure patterns. For example, about 4 000 farmers, predominantly white, control 44% of useable agricultural land in contrast to about 67% of the African

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[12] Sapem, *Economic Profile of Namibia*, March 1994, p 43.

[13] For a detailed disaggregation and analysis of employment data by sex, see the chapter on Article 11 of CEDAW dealing with labour development.

[14] Own account workers have no employees but may have unpaid family workers.

[15] CSO, *Population and Housing Census* (Basic Analysis with Highlights), 1994, pp.50-53.

[16] The gender composition of the labour force and the unemployed will be discussed below.

[17] NPC, *Namibia's First National Development Plan* (Draft), 1994, p 12.

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population who have access to only 41% of agricultural land, a portion of which is of poor quality.[18] This skewed land distribution pattern is the result of the colonial political economy. The Agricultural (Commercial) Land Reform Act of 1995 was recently passed to redress the situation.

According to the figures of the 1993/94 National Household Income and Expenditure Survey (NHIES), the average annual consumption of the Namibian household is N$12 783 and the average annual per capita consumption is N$2 253. These figures are skewed by the small but affluent upper class who usually spend a lot on luxury items. Female-headed households consumed only about 25% of the total annual household consumption, whereas those headed by males consumed three times more. The average per capita annual consumption is N$1 475 for female-headed households and N$2 730 for male-headed households. According to international standards, households with a long-term food consumption of 60% or more of total consumption are regarded as poor, whereas those with an 80% food consumption rate are classified as very poor. In terms of this indicator, 30% of Namibian households are poor, of which 5,6% are extremely poor.[19]

In accordance with the above poverty measurement, about 32,7% of female-headed households in comparison to 28,2% of male-headed households were poor. On the other hand, 6,1% of female- headed households in contrast to 5,2% of male-headed households were severely poor. It is thus obvious that sex is an important demographic variable which is correlated with the well-being of a household and hence its poverty status. Other variables support the assertion that female- headed households tend to be worse off than those headed by males. For example, about 62% of female-headed households are sleeping in traditional houses as opposed to 41% of male-headed households. When comparing the two types of households in terms of income-generating capacity, the same trend is more or less maintained. For example, the following items are distributed as follows between the female- and male-headed households respectively: cattle ownership (32% v 40%), sheep ownership (6% v 9%), grazing land ownership (8% v 9%) and ownership of fields (61% v 45%).

Female and male ownership of motor vehicles is 10% v 27%, and radio ownership 58% v 69% respectively. Selected housing indicators also suggest that female-headed households are worse off than male-headed households, e.g. cooking without electricity or gas (79% v 69), lighting without electricity (80% v 68%), bush or bucket as toilet (65% v 51%) and no pipe or well within a five minutes' walk (54% v 39%). The above examples demonstrate the need to target female-headed households for development projects.

The consumer price index (CPI) is popularly used to evaluate the general economic and social analyses used to assess, for example, the standard of living of consumers, and adjustments to wages and salaries to bring them into line with price movements. The all-items CPI continues to rise steadily: for example, the September 1995 CPI stood at 130,5 - an increase of 1,4% since the August figure (129,1). This increase is the result of increases for the following items: recreation and entertainment (2,7%), housing (2,3%), miscellaneous goods and services (1,8%) and transport/communications (1,1%). During September, a fall in the year-on inflation rate was recorded for the second consecutive month: for example, the rate for September was 8,7% - a decline of 0,7% from the August rate (9,4%). The average annual and monthly inflation rates for the period January to September 1995 were 10,6% and 0,7% respectively, whereas the corresponding figures for 1994 were 10,4% and 2,0%.

The good news for consumers is that for the past four consecutive months (September to December 1995), the food index has stabilised around the 127 mark with no changes recorded for the indexes of August and September.

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[18] DWA, *Namibia National Report to the 4th World Conference on Women*, 1994, p.7.

[19] CSO, *Living Conditions in Namibia 1993/94: Basic Description with Highlights* (Draft Main Report), 1995, pp. 24, 32, 56, 64, 80.

This food price stabilisation is important for female-headed households, who generally spend more on food items (39%) than their male counterparts (27%). Similarly, households in Windhoek's poorer neighbourhood of Katutura, who spend an average of 24% of their total private consumption on foods, can benefit more from lower food prices than the more affluent households of central Windhoek and the Khomasdal neighbourhood, who spend an average of 12% and 18% respectively on food.[20]

Political structures

Upon attaining its independence on 21 March 1990, the Republic of Namibia adopted a Constitution which is the fundamental law of the country. Article 1 of the Constitution characterises the Republic as a "sovereign, secular, democratic and unitary state founded upon the principles of democracy, the rule of law and justice for all." The same article states that, "All power shall be vested in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State." The Namibian Constitution also promulgates a multi-party democracy with a series of fundamental rights and freedoms for inhabitants. Among others, the following rights are provided for: speech and expression; religion, conscience and belief; and association.

> *"One of the fruits of Namibia's independence on March 21 1990, was the creation of a new and favourable environment for the promotion of gender equality and the advancement of women in general."*
>
> Hon. Netumbo Ndaitwah
> Deputy Minister of Foreign Affairs, Namibian Parliament, 8 November 1995.

The Constitution also lays down the division of power between the Executive, the Legislature and the Judiciary. The executive branch is headed by the President who is assisted by the Cabinet. The President is elected by direct popular vote and can serve for a maximum of two five-year terms. The bicameral legislature consists of the National Assembly with 72 members elected and six appointed by the President for a five-year term, and the National Council made up of two representatives drawn from each of the 13 geographical regions of Namibia, who are elected for a six-year term from among the various Regional Council members. The National Assembly proposes legislation and has the authority to enact laws despite objections from the National Council, if two-thirds of the members approve. The National Council reviews bills passed by the National Assembly and recommends legislation of regional importance. The judicial branch of the Government comprises the Supreme Court, the High Court and all the Lower Courts, such as Magistrates' Courts and District Labour Courts. All courts are independent and subject only to the Constitution and law.

Although Namibia is a unitary state, the Constitution makes provision for the devolution of administrative, decision-making and advisory power to lower tiers of government. The Central Government with its seat in Windhoek is the first tier, while the Regional Councils and Local Authorities (municipalities, towns and villages) constitute the second and third tiers, respectively. The Central Government consists of the President of the Republic who is the Head of State and Government, the Prime Minister, Deputy Prime Minister, and Ministers and Deputy Ministers of the 20 line ministries. Heading the administration of each ministry is a Permanent Secretary appointed by the President. Regional Councils elect a Management Committee from among their members, as well as a Regional Governor. Local Authorities elect a Local Authority Council from among their members, whose responsibility it is to manage the provision of services and other administrative affairs of their respective Local Authorities. The administrative head of a Municipality is the Mayor, who is assisted by a Town Clerk. Other significant national control bodies include the Attorney-General, National Planning Commission and Public Service Commission, and independent control bodies such as the Prosecutor-General, Auditor-General, Ombudsman and Electoral Commission.

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[20] CSO, *Interim Consumer Price Index (Windhoek, December 1992 = 100)*, September 1995. Take note that the inflation rate is only available for Windhoek and not for the whole of Namibia.

Article 17 of the Namibian Constitution states:

> *"All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form and join political parties ... and to participate in the conduct of public affairs, whether directly or through freely chosen representatives."*

Thus the Namibian people have at their disposal a mechanism to exercise their sovereignty directly or indirectly. To this effect the same article states:

> *"Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office ..."*

It is the duty of the Electoral Commission, established in terms of the Electoral Act of 1992, to organise and supervise elections, register voters and parties, and promote voters' education. In carrying out its administrative tasks the Electoral Commission is assisted by the Directorate of Elections which is located in the Office of the Prime Minister. Two electoral systems are utilised in Namibia: the system of proportional representation in which National Assembly and local government seats are allocated to parties in proportion to votes cast for them; and the "winner takes all" system utilised at the regional government level, where voting for individual candidates takes place on a constituency basis. In future, ballots at the local level will also allow the electorate to vote for individual candidates rather than for a political party. Following are the parties which participated in the last national elections held, in December 1994, with the number of parliamentary seats gained by each: South West Africa People's Organisation Party (SWAPO), 53; Democratic Turnhalle Alliance (DTA), 15; United Democratic Front (UDF), 2; Democratic Coalition of Namibia (DCN), 1; and Monitor Aksie Groep (MAG), 1. Another three parties failed to gain any seat.[21]

Legal system

The legal system of Namibia is made up of the Supreme Court, High Court and Lower Courts, and the Attorney-General, Prosecutor-General, Ombudsman, Judges, Magistrates and the Judicial Service Commission. Traditional Courts continue to administer customary law. The Constitution states that the High Court "... shall have original jurisdiction to hear and adjudicate upon all civil disputes and criminal prosecutions, including cases which involve the interpretation, implementation and upholding of this Constitution and the fundamental rights guaranteed thereunder." The right to hear and adjudicate upon appeals from the High Court is vested in the Supreme Court.[22]

The independence of judges is guaranteed by the Constitution; they are appointed for life and may only be removed on the grounds of mental incapacity or gross misconduct. The Prosecutor-General and Attorney-General are the law enforcement officers of the Government, while the Ombudsman's duties are to protect the public interest, promote human rights and keep an eye on the conduct of public authorities and officials.

Namibia's legal system is modelled on its Constitution, which is the supreme law. Namibian law can be divided into the categories of general law (Roman-Dutch common law and statute law) and customary law. The former is more evident in commercial transactions, the functioning of government, labour matters, criminal matters and some aspects of personal law. The latter has emerged from the customs and practices of different traditional communities. Thus, a multitude of diverse customary laws operate in Namibia, having a differential impact on the lives of individuals and communities.[23] The Constitution requires that all laws - including common law and customary law - be consistent with the terms of the Constitution,[24] but in practice the implementation of this directive is still underway.

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[21] *Government Gazette*, No. 1003 of 23 December 1994.

[22] Namibian Constitution, Articles 79 and 80.

B. IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified by the Namibian Parliament in 1992. In the parliamentary discussion which accompanied this step, it was noted that the principle of equality between men and women is already enshrined in the Namibian Constitution. However, a number of parliamentarians realistically noted that there are a vast number of Namibian laws, practices and attitudes which are inconsistent with the Constitution and the notion of sexual equality.

Legal status of the Convention

Article 144 of the Namibian Constitution provides that international agreements which are binding on Namibia shall form part of the law in Namibia, but there is some debate in legal quarters about the precise effect of this provision. For example, it is not clear at this stage whether an individual could seek assistance from a Namibian court to enforce rights stated in the Convention directly, or whether this would be possible only after domestic legislation has been enacted to give effect to the provisions of the Convention. As yet, there has been no judicial interpretation of the Constitution which would give guidance on this question.

This legal question has not yet become relevant in practice, however, as the provisions of the Namibian Constitution which address equality between men and women have remained virtually unutilised as tools for protecting the rights of women.

There are several possible reasons for this. Firstly, the concept of "rights" is still a relatively new one in Namibia, and it is not yet common for Namibians to resort to the legal system for assistance in asserting their rights. Secondly, some Namibians may still harbour a distrust of the legal system stemming from Namibia's recent history when the colonial Government utilised law as a means of repression. Although there were some courageous judgements which attempted to interpret the laws of the apartheid era in a manner which was consistent with the protection of human rights, many Namibians viewed the courts and their white male judges as part and parcel of the apartheid regime. Thirdly, because Namibia has been independent for only a relatively short time, many Namibians trust that reforms will be forthcoming and thus see no need to use the legal system to hasten change. Fourthly, despite the availability of legal aid and the existence of NGOs which provide legal advice and assistance, practical access to the legal system is still difficult for many Namibians.

Department of Women Affairs

Shortly after independence, a Department of Women Affairs (DWA) was established in the Office of the President to facilitate liaison between women and the Government and to help identify priorities for action on issues relating to sexual equality. Since its inception, the DWA has been involved in gender-sensitisation and other forms of training, in soliciting input on gender issues from Namibia's different regions, and in funding small businesses and projects run by women.

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[23] See, for example, CASS & NDT, *Improving the Legal and Socio-Economic Situation of Women in Namibia*, (Uukwambi, Ombalantu an Uukwanyama Integrated Report - Part 2), 1994, pp 15-18.

[24] Namibian Constitution, Article 66.

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After carrying out consultations with a broad range of groups, the DWA has chosen to focus on networking and facilitating functions rather than the direct implementation of projects. It places a strong emphasis on the partnership between government and NGOs, and on capacity-building in both arenas. At present, the central goal of the DWA is the development of a national strategy for integrating gender concerns into the overall development process.

Since Namibia's ratification of CEDAW in 1992, the Convention has been the departure point for the activities of the DWA. Recognising that meaningful implementation of CEDAW cannot be accomplished solely through legal avenues, the DWA is determined to make CEDAW a living document in Namibia. In consultation with various members of government, NGOs, church groups and donors, the DWA formulated a "National Communication Strategy in Support of the UN Convention on the Elimination of All Forms of Discrimination Against Women". This document includes an analysis of gender-related issues, strategies for change and suggestions for concrete programmes which have been used as the DWA's basic guidelines for action. More than 1 000 copies have been distributed inside Namibia, and the OAU's Office on Women has requested copies to circulate in Africa as an example for other countries.

> *"Over the next three years (1993-95), in collaboration with government departments and partner agencies, the Department of Women Affairs (DWA) will widely disseminate the contents of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women in order to:*
>
> - *bring about legal, social, cultural, political, economic and labour changes that will enhance the status of women in Namibia;*
> - *sensitise government ministries, non-governmental organisations (NGOs) and community-based organisations (CBOs) to integrate in their programmes messages that will further the aims of the Convention;*
> - *Encourage relevant government ministries, NGOs and CBOs to initiate educational activities and tangible projects that will strengthen family life and the family resources base and reduce physical, verbal and sexual abuse against women in and outside the family;*
> - *Enlist men and individuals in positions of leadership as allies in the crusade to eliminate discrimination against women;*
> - *Ensure that appropriate strategies are implemented to empower rural and disadvantaged women against gender discrimination."*
>
> DWA. National Communications Strategy, July 1993, p. 17

The DWA has taken a lead in the popularisation of CEDAW by facilitating the preparation of a simplified, illustrated version of the Convention, which also compares CEDAW to related provisions in the Namibian Constitution. This booklet, originally produced in Namibia's official language of English, has been translated into six other Namibian languages and widely distributed throughout the country. It has also been shared with women in many other countries and used as a model for a similar booklet in South Africa. Most importantly, this booklet has been used to raise public awareness of CEDAW, and of its relevance to the Namibian situation.

The DWA is in the process of establishing decentralised structures as a mechanism for implementing CEDAW in Namibia. In 1992 the DWA and the National Planning Commission established an inter-ministerial Gender Network charged with the task of monitoring gender issues in government policy. This body was subsequently expanded to incorporate more input from NGOs. During 1994 the DWA established nine gender sectoral committees which attempt to bring together government representatives and NGOs to co-ordinate action in the following fields: Reproductive Health and Maternal Protection, Women and Law, Violence Against Women and Children, Education, Training and Employment; Rural Community Programmes and the Environment, Information, Education and Communication; Economic

Activities, Research and Data Collection; and Women and Decision-Making.[25] Each of these nine sectoral committees is represented on a Gender Network Co-ordinating Committee, which meets quarterly and plays an important advisory role.

The most extensive monitoring structure is the Annual Programme-Sharing Forum. This is an annual meeting which is designed to facilitate the exchange of information between different agencies and to solicit broad input on gender policy. It is attended by members of the Gender Network Co-ordinating Committee, additional representatives from each of the nine gender sectoral committees, two people from each of Namibia's 13 regions (community leaders nominated by the Regional Governor's Office), and representatives from ministries and NGOs which may not be adequately represented on the sectoral committees (invited by the DWA in consultation with the Gender Network Co-ordinating Committee).

The DWA is at present attempting to work through these interconnected structures to develop a national policy and programme of action. The most recent Annual Programme-Sharing Forum, held in December 1994, proposed draft policy statements for the various sectors. These drafts have been revised by the different sectoral committees. Further revisions will be carried out in the course of regional meetings convened for the purpose of reporting on Namibia's participation in the 4th World Conference on Women in Beijing.

The structures which have been initiated by the DWA are still evolving. While the idea of working together with NGOs has been a positive one, the implementation of policies is necessarily more complex when multiple agencies are involved. The DWA is also still refining its role as a co-ordinating body. The Gender Network has been handicapped by the fact that its meetings have been sporadic, and by a lack of continuity: the government departments and NGOs which participate in the Network sometimes send different representatives to different meetings, making it hard for the body to progress, and attendance is not always strong. The Gender Network and the Gender Co-ordinating Committee would probably be more effective if they were formally established by statute and given clear and binding duties and responsibilities. Statutory authority would also increase the status of these structures, which would benefit from greater participation by high-ranking government officials.

In general the DWA also faces an enormous challenge in balancing the enormous expectations coming from government as well as from the public against the reality of a small staff and limited capacity. It would be better placed to accomplish its objectives if its status and capacity were strengthened. For example, there is no DWA representative at Cabinet level or in the National Assembly - not even as an observer - and the DWA is not consistently consulted on legislation and policies which include critical gender components. It also lacks the staff to establish ongoing regional representation, which makes it difficult to represent rural women adequately.

Women and Law Committee of the Law Reform and Development Commission

The Namibian Constitution provides that all laws in force at independence remain in place until altered by Parliament or declared unconstitutional by a court.[26] As a result, there are many aspects of statute law, common law and customary law in force which are contrary to both the Constitution and the provisions of CEDAW.

The Law Reform and Development Commission was established as a statutory body in 1992. A Women and Law Committee was established under the auspices of the Commission to give special attention to law reform on gender-related matters. In addition to being consulted on various legislative reforms, the

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[25] See DWA, *Proceedings of the 1st Annual Programme-Sharing Forum of Agencies Involved in Promotion of Women in Development*, November 1993; DWA, *Report from the 2nd Annual Programme-Sharing Forum*, December 1994; DWA, *Gender Decentralisation Strategy for Namibia*, undated.

[26] Namibian Constitution, Article 140(1).

Law Reform and Development Commission has initiated one piece of legislation to date - a Married Persons Equality Bill which will be discussed in more detail below.

The capacity of the Law Reform and Development Commission is limited by the fact that it is composed of persons with other full-time jobs, and it lacks the staff to carry out research and drafting. While its resources might be extended by drawing on expertise from outside government, this approach has not yet been extensively utilised. It must be kept in mind that Namibia's recent independence has brought an impetus for legal, social and economic reform on many fronts, meaning that gender issues must compete for attention on a crowded national agenda. These practical obstacles have combined to slow the pace of change.

Incorporating gender into overall policy

Since independence there has been an increasing recognition of gender issues at policy levels in various ministries. Although there was an initial tendency to compartmentalise "women's issues", there seems to be a gradual move towards greater integration of gender concerns into overall policy. For example, a number of civil servants - including national literacy trainers and personnel from the NPC and Ministry of Agriculture, Water and Rural Development (MAWRD) - have participated in training programmes designed to encourage gender-sensitive planning. The Ministry of Education and Culture (MEC) has increased its capacity to produce gender-disaggregated statistics, in order to inform its policy-making with information on gender differences in matters such as enrolment and drop-out rates. The Central Statistics Office (CSO) of the NPC has also embarked on an effort to publicise gender-specific statistics which can be used to guide policy-making.

With respect to the National Development Plan prepared by the NPC for 1995-2000, it is noteworthy that applications from ministries for the inclusion of specific projects in the nation's Public Sector Investment Programme must provide an explicit discussion of the project's gender impact.[27] However, the latest National Development Plan has been criticised on the grounds that its treatment of gender issues is lacking in specificity and uneven across different sectors, indicating that the NPC is still hampered by a lack of gender expertise. There is a need to strengthen the links between the DWA and NPC to ensure that gender concerns are addressed more effectively in future plans.

A few ministries have established structures specifically charged with giving attention to gender issues. For example, the Ministry of Agriculture, Water and Rural Development has established a Steering Committee on Gender Sensitisation to ensure that the needs of women farmers are adequately incorporated into agriculture policies and programmes at all levels. However, the approach to gender is uneven across different sectors and there is a need for centralised watchdog mechanisms to ensure that gender issues are given sufficient priority in government policy and planning in all sectors - a role which can perhaps eventually be carried out by the Gender Network and the Gender Network Co-ordinating Committee.

In fact, the need for greater attention to gender issues by line ministries was highlighted by the process of preparing this country report. The consultative workshop organised by the DWA to review the draft country report was poorly attended by ministry representatives, and not a single ministry volunteered feedback on the draft report. The DWA also discovered that, while some ministries regularly compile gender-disaggregated statistics on their areas of concern, other ministries have not yet acknowledged gender as a relevant item for analysis. Factors such as these emphasise the need for a centralised, policy-monitoring body with high status and visibility.

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[27] *NDP1, Vol II*, "Public Sector Investment Programme", p vii.

C. MONITORING COMPLIANCE WITH THE CONVENTION

At the time of ratification, various members of Parliament expressed a concern that acceding to the Convention alone would not be sufficient to give it meaningful force and effect. However, while Namibia acknowledges the importance of adequate monitoring of the implementation of CEDAW, mechanisms to accomplish this are still in a developing stage. The structures initiated by the DWA - the nine sectoral committees, the Gender Network, the Gender Network Co-ordinating Committee and the Annual Programme-Sharing Forum - could eventually play a monitoring function, but they have not yet achieved the status or the capacity to carry out this role effectively.

At the time of ratification a SWAPO MP remarked:

"I trust our Namibian women will put life into this Convention and I am convinced that there will be no way back to a male-dominated society. But it is not enough simply to pay lip service to international conventions and then neglect to update our own legislation to give effect to our stated commitment. I want to see that all of us as legislators, but especially the appointed Law Commission [referring to the Law Reform and Development Commission], *are gearing for action on revised legislation on all discriminatory laws against women.*"(The Hon. Mrs Hübschle)[28]

An MP representing the Namibia National Front expressed similar concerns:

"... it is one thing to have a progressive Constitution or to accede to this Convention, but it is quite another to actually live up, in practice, to the undertakings and obligations so assumed. It is at this level of practical implementation that many countries have failed to live up to both the letter and spirit of their own Constitution, as well as the international obligations attached to acceding to such multilateral treaties. I sincerely hope that Namibia will prove to be an exception in this regard. In this connection, I hope and trust that the Department of Women Affairs in the Office of the President will be an active watchdog ..." (The Hon. Deputy Minister of Justice)[29](the Hon. Mr. V. R. Rukoro)

A representative of the Namibia Patriotic Front offered a more specific suggestion for monitoring compliance with the Convention:

"As we are approving this Convention, I would like to appeal to the Government of the day and ... also to the Department of Women Affairs in the Office of the President, to undertake ... to bring about an annual publication of the records [of] *how this country behaves in terms of this Convention, just like many other countries do in the case of human rights conventions ...*" (The Hon. Mr Katjiuongua)[30]

This speaker went on to suggest that women's organisations within Namibia could then take responsibility for publicising these annual progress reports.

The periodic country reports required by the terms of the Convention constitute a form of monitoring. The DWA has been given responsibility for the preparation of these reports, and the present report will be made widely available inside Namibia as a record of the nation's progress. However, although the DWA invited a wide range of government ministries and NGOs to participate in the reporting process by commenting on the first draft of this country report, the level of interest shown both inside and outside government was low, pointing to the need for a more formalised monitoring process.

A similar problem has been cited in connection with the monitoring of Namibia's compliance of the UN Convention on the Rights of the Child. It has been proposed in that context that a statutory body which combines government and NGO representation be given explicit responsibility for ongoing monitoring and reporting in connection with the Convention on the Rights of the Child, the articles of the

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[28] Mrs Hübschle, *Hansard*, 30 June 1992, p 198

[29] Mr Rukoro, then Deputy Minister of Justice, *Hansard*, 30 June 1992, p 199

[30] Mr Katjiuongua, *Hansard*, 30 June 1992, p 201

Constitution which are relevant to children and the major aspects of government policy on children. It has been suggested that statutory authority would give such a monitoring body a legal standing to request and secure information, as well as legally binding it to meet regularly and to carry out its functions. It has also been suggested that such a body should be broadly representative, with permanent support staff to enable it to carry out its functions.[31]

A precedent for such a structure exists in the Labour Advisory Council, a body established by Namibia's Labour Act to bring together representatives of employers, employees and government to monitor compliance with the Labour Act and with the conventions of the International Labour Organisation and to make recommendations on labour matters. The Council has also established specialised subcommittees to deal with specific topics.[32]

It is possible that a similar approach could be adopted for monitoring progress in the achievement of sexual equality. For example, the Gender Network could be reconstituted as a statutory monitoring body which could resort under the DWA. This body could be charged with the task of monitoring compliance with CEDAW, addressing the implementation of the constitutional provisions relating to sexual equality and making recommendations on the gender components of proposed laws and policies. The issue of monitoring is an area which requires further consideration.

D. REMEDIES AVAILABLE TO INDIVIDUAL WOMEN WHO HAVE SUFFERED DISCRIMINATION

Namibia has an independent judiciary which is charged with the task of interpreting Namibia's laws, and with applying the Constitution as the supreme law of the land.[33] Any person who feels that his or her constitutional rights and freedoms have been infringed or threatened is entitled to approach a competent court to seek enforcement or protection. The courts are empowered to make any orders which are necessary to give effect to the fundamental rights and freedoms, including the power to award monetary compensation to persons who have suffered damage as a result of the unlawful violation of their rights.[34]

Namibia also has an independent Ombudsman with a constitutional duty to investigate complaints concerning alleged violations of the fundamental rights and freedoms by the Government or by private person or institutions. The Ombudsman is empowered to take appropriate action to remedy such violations. Individuals who feel that their rights have been infringed are entitled to approach the Ombudsman, who can deal with the complaint directly, or assist a complainant in bringing an appropriate court action.[35]

These remedies are available in theory, but in practice neither of these approaches have been utilised to secure sexual equality. To date, the constitutional provision outlawing sex discrimination has been cited in only one reported case - and that case addressed a technical rule of evidence rather than a claim by an individual that his or her constitutional rights had been violated.[36]

The problem of access to affordable legal assistance may account to some extent for the failure of individuals to seek remedies through the courts. However, persons wishing to bring a court action to secure their constitutional rights might be able to get free legal assistance from the Office of the

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[31] Social Sciences Division (University of Namibia), Legal Assistance Centre and UNICEF, *Children in Namibia: Reaching Towards the Rights of Every Child*, 1995, p 170.

[32] See Labour Act 6 of 1992, sections 7-14.

[33] Namibian Constitution, Chapter 9.

[34] Namibian Constitution, Article 25.

[35] Namibian Constitution, Articles 89-94 and 25

[36] *S v D* 1991 (1) SA 513 (Nm).

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Ombudsman, from the government-funded legal aid scheme or from NGOs such as the Legal Assistance Centre (LAC).

Like the courts, the Ombudsman's office is seldom used as an avenue of redress for constitutional issues. A substantial number of complaints are investigated by the Ombudsman's Office each year (497 in 1991, 409 in 1992, 290 in 1993 and 336 in 1994), but virtually all of these complaints relate to administrative matters, with a large portion being complaints from government employees about employment-related matters. The Office of the Ombudsman has seldom been approached to investigate violations of constitutional rights of any sort.[37] The Ombudsman is in the process of preparing educational material which should help to popularise its services, and the office is attempting to extend its presence outside of Windhoek by making it easier for people to fill in complaint forms at local magistrates' courts or Regional Council offices. However, it remains to be seen whether such steps will be sufficient to reach members of the public with gender-related problems.

Thus, while a variety of enforcement mechanisms are available to individuals, members of the public have not begun to utilise these channels to combat sex discrimination. Some of the attitudes which may lie behind this failure to challenge rights violations have already been discussed above. It is clear that there is a need for continuing public education on the meaning of rights, and on the importance of asserting them.[38]

E. CEDAW AND BEIJING

The implementation of CEDAW in Namibia will go hand-in-hand with the implementation of the Global Platform for Action adopted at the 4th World Conference on Women held in Beijing in September 1995.

Namibia was represented at Beijing by an official delegation of 30 women which included representatives from all 13 regions as well as Members of Parliament, representatives from the Department of Women Affairs, officials from various ministries, two NGO representatives and two members of the press. Government participation was spearheaded by a National Preparatory Committee which held workshops throughout the country in advance of the conference in order to identify issues of pressing concern.[39]

Eleven women representing various NGOs attended the NGO Forum on Women which ran parallel to the official Beijing Conference. NGO participation was coordinated by an NGO Preparatory Committee representing more than 18 groups. Like the Government Preparatory Committee, the NGO Preparatory Committee also held regional workshops in preparation for Beijing.[40]

> *"The preparations for the 4th World Conference on Women provided an opportunity for Namibia to reflect on the status of women in the society. It also provided a chance for Namibia to share experiences and cooperate with other countries in the world on gender and women-related issues."*
>
> Final Report of the National Preparatory Committee to the 4th World Conference on Women, 1995, p.18.

Both government and NGO participants have expressed the opinion that mobilisation around Beijing helped to revitalise the Namibian women's movement. As in the case of CEDAW, the Department of Women Affairs will take primary responsibility for implementation of the Global Platform for Action.

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[37] *Annual Reports of the Ombudsman's Office, 1991-1994, The Namibian*, 9 June 1995.

[38] ***Ibid.***

[39] A full account of the Government's role in Beijing is available in the ***Final Report of the National Preparatory Committee to the 4th World Conference on Women***, December 1995.

[40] A full account of NGO participation in the Beijing conference is contained in ***Report of the Non-Governmental Preparatory Committee (Namibia)***"

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which will take place through the mechanism of its nine gender sectoral committees.[41] This approach should help to integrate government and NGO initiatives and encourage coordinated action on gender issues. The Platform for Action which was adopted in Beijing is a document which is action-oriented. It requires government, non-governmental organisations, UN agencies, international corporations Private Sector and everybody who is involved in development to make active and visible policies of mainstreaming gender perspectives into all policies and programmes.

> *"The implementation of the Platform for Action requires every Namibia's commitment. We need to implement policies which will ensure that all members of our society are partners in the development of our country. I am making a special appeal to our men that they should not look at these issues as women's issues, but consider them as national problems which need everybody's concrete efforts for the betterment of us all."*
>
> Deputy Minister Netumbo Ndaitwah
> National Chairperson, National Preparatory Committee report on Beijing, 27 October 1995.

The NGO Preparatory Committee hopes to transform itself into an ongoing Women's Coalition which can involve a wide range of women in the process of taking gender issues forward. As will be discussed in more detail below (in the chapter on Affirmative Action), this group is particularly committed to the development of a programme on affirmative action for the girl child, along the lines of a project which was workshopped in Beijing. The NGO coalition also plans to focus on the formation of a Rural Women's Movement to give increased attention to this often-neglected constituency.

Because of the intertwined and overlapping nature of CEDAW and the Beijing Platform for Action, future monitoring of the implementation of these commitments should be carried our in tanuem by a body established by statute and specifically charged with this task.

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[41] See page 40 above.

ARTICLE 1

The Definition of Discrimination

1.1 CONSTITUTIONAL PROVISIONS PERTAINING TO WOMEN

The Namibian Constitution has been widely praised for its strong commitment to human rights, and for its specific attention to sexual equality and the rights of women. It is one of the few constitutions in the world which uses gender-neutral language throughout, and it explicitly forbids discrimination on the basis of sex.

Article 10 reads as follows:

> *Equality and Freedom from Discrimination*
>
> (1) *All persons shall be equal before the law.*
> (2) *No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.*

This Article is supplemented by Article 23 on affirmative action, which places a special emphasis on women.

> *Apartheid and Affirmative Action*
>
> (1) *The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.*
>
> (2) *Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, and the prison service.*
>
> (3) *In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibian have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.*

These general provisions are supplemented by references to equality between men and women in all matters relating to marriage and the family in Article 14:

> *Family*
>
> *(1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.*
>
> *(2) Marriage shall be entered into only with the free and full consent of the intending spouses.*
>
> *(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

The binding sections of the Constitution are also supplemented by several references to equality for women in a non-binding chapter on Principles of State Policy. These principles are not in themselves enforceable by any court, but are intended to guide the Government in making and applying laws, and to guide the courts in interpreting any laws based on them. The principles contained in Article 95 on "Promotion of the Welfare of the People" commit the state to adopt policies aimed at, among other things, the following:

> *(a) enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; in particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women; further, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women.*
>
> *(b) enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength.*
>
> *(g) enactment of legislation to ensure that the unemployed, the incapacitated, the indigent and the disadvantaged are accorded such social benefits and amenities as are determined by Parliament to be just and affordable with due regard to the resources of the State. ...*

1.2 THE SCOPE OF DISCRIMINATION

Article 1 of CEDAW makes it clear that the Convention is aimed at both intentional discrimination and unintentional discriminatory effects. Because the discrimination provisions of the Namibian Constitution have not yet been extensively interpreted and applied by the courts, it is not yet clear whether Article 10 will be applied with equal force to unintentional and intentional discrimination.

Article 10(2) on sex discrimination has only been discussed in one court case to date, where it seemed to be interpreted as applying only to purposeful discrimination. The case in question dealt with the special cautionary rule which previously applied to sexual offence cases. This rule, which is based on the unsupported theory that false charges of sexual offences are common, required that the evidence of a complainant in a sexual offence case be treated with an extra degree of caution. The case in question overturned the rule on the grounds of irrationality since there is no empirical evidence that false charges are laid more frequently in sexual offence cases than in any other crime. However, noting that most complaints in sexual offence cases are laid by women, the court stated "that the so-called cautionary

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rule has no other purpose than to discriminate against women complainants" and "thus probably also is contrary to Article 10 of the Namibian Constitution which provides for the equality of all persons before the law regardless of sex."[1]

Future court cases may take a broader view of what constitutes discrimination in terms of Article 10. Namibian law and policy have in general taken a comprehensive approach to sex and gender discrimination which is totally consistent with CEDAW. For example, the provisions in Namibia's Labour Act forbidding discrimination in all aspects of employment provide that where any act or requirement is proved to have an adverse effect on a particular person or group of persons in comparison with its effect on persons of the other sex, it will be presumed that unfair discrimination has taken place unless the contrary is proved.[2]

As another example, items on the law reform agenda of the Women and Law Committee of the Law Reform and Development Commission include not only laws which overtly discriminate against women (such as the laws on marriage), but also gender-neutral laws which are inadequate to meet the needs of women (such as the laws on child maintenance).

It has been noted that Namibia's Constitution treats race discrimination and sex discrimination somewhat differently. Article 23(1) specifically provides that the practice of racial discrimination may be rendered criminally punishable. Parliament has already taken this step, through the enactment of the Racial Discrimination Prohibition Act which covers discrimination in access to public amenities, educational institutions and medical facilities; the purchase and sale of land; employment; admission to private associations and religious services; and the incitement of racial disharmony by means of language, publications, flags, emblems and so forth.[3] There is no analogous enforcement mechanism for sex discrimination.

The strong stance which the Constitution takes against race discrimination is understandable. Namibia is emerging from an apartheid past in which racism was the basis for the denial of fundamental human rights to a majority of the population. Under the colonial Government, racial distinctions were systematically embodied in law and policy in a way which sex discrimination was not. Many of the legal distinctions between men and women were imported into Namibia along with the colonially-imposed system of Roman-Dutch law, and simply accepted and reinforced by the governing powers prior to independence.

Nevertheless, the Government is aware of the reality that remaining vestiges of racism inspire public denunciation while sex discrimination (particularly in the context of family life) is still accepted as a norm by many members of Namibian society. Therefore, it may be necessary to take a harder look at practical mechanisms for encouraging and enforcing sex and gender equality in the future.

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[1] *S v D* 1991 (1) SA 513 (Nm), p.516H-I

[2] Labour Act 6 of 1992, section 107(4)

[3] Racial Discrimination Prohibition Act 26 of 1991

ARTICLE 2

Policy Measures to Eliminate Sex Discrimination

2.1 INTRODUCTION

Many of the general issues raised by this Article of CEDAW are discussed more specifically in other chapters of this report. This chapter will attempt to give a brief overview of government action on sex discrimination.

2.2 THE PRINCIPLE OF EQUALITY OF MEN AND WOMEN AND PROHIBITIONS ON SEX DISCRIMINATION

As noted above in the discussion of Article 1 of CEDAW, the principle of sexual equality is unequivocally enshrined in the Namibian Constitution, which states that all persons are equal before the law and that no person may be discriminated against on the grounds of sex.[1]

There is no subsidiary legislation which contains a general prohibition on sex discrimination. However, sex discrimination in all aspects of employment has been explicitly outlawed by Namibia's Labour Act.[2] Sex discrimination in Namibia's tax laws has also been eliminated by a series of amendments to the Income Tax Act.[3] Sexual equality will be significantly advanced by the Married Persons Equality Act before Parliament at the time of writing (December 1995), which will eliminate all sexual inequality in the laws surrounding civil marriage.[4]

Furthermore, a number of laws passed since independence have incorporated provisions aimed at affirmative action for women, including a law which required that women candidates were put forward by all parties in Namibia's first local government elections, and a number of laws which ensure female representation on various government and professional bodies.[5]

The Government is also giving attention to sex discrimination under customary law. The Constitution states that the customary law in force at the date of independence shall remain valid only to the extent to which it does not conflict with the Constitution.[6] However, the Constitution further provides that all laws in force at the date of independence shall remain in force until they are amended or repealed by Parliament, or until they are declared unconstitutional by a competent court. A draft Community Courts Bill which is currently under discussion would regulate the jurisdiction and powers of traditional tribunals and reinforce the

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[1] Namibian Constitution, Article 10.

[2] Labour Act 6 of 1992, section 107.

[3] Income Tax Act 24 of 1981, as amended by Act 12/1991, Act 33/1991 and Act 25/1992.

[4] The impact of this new law will be discussed in detail in the part of the report dealing with Article 15 of CEDAW.

[5] These affirmative action provisions will be discussed in detail in the part of the report dealing with Article 4 of CEDAW.

[6] Namibian Constitution, Articles 66 and 140.

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Constitution by defining the "customary law" which can be administered by such bodies as customary law which is not incompatible with the Namibian Constitution. The position of women under customary law should also be improved by a recently-enacted Traditional Authorities Act which charges all traditional authorities with the promotion of affirmative action among the members of the community, particularly by promoting women to positions of leadership.

As a young nation, Namibia is still in the process of re-writing the laws which it inherited from South Africa at independence. Thus, there are areas in which Namibia's laws still contain provisions which are contrary to the constitutional guarantee of sexual equality - most notably the laws on marriage and inheritance and aspects of the laws on rape and other sexual offences. However, the law reform process is continuing and these areas are receiving attention.

It must be conceded that sexual inequality is still a feature of Namibian life, particularly in family and social settings. Specific steps which have been taken by government to encourage the practical implementation of the principle of sexual equality in different spheres of life will be cited in the following chapters of this report, along with steps which are planned for the future.

2.3 THE PROTECTION OF WOMEN AGAINST ACTS OF DISCRIMINATION

As discussed above in Part I, individual women have the option of seeking protection against acts of discrimination from the courts or from the Ombudsman's Office, even though neither of these avenues have yet become popular.

At a more structural level, the Department of Women Affairs (DWA) is in the process of formulating a national gender policy, and the Women and Law Committee of the Law Reform and Development Commission has been given responsibility for overseeing law reform to eliminate all legal discrimination against women.

A number of NGOs have complained that the pace of change through channels such as these has not yet been sufficiently rapid. This points to the need for more effective monitoring mechanisms to chart the progress of CEDAW, along the lines discussed in Part I.

2.4 DISCRIMINATION BY PUBLIC AUTHORITIES AND INSTITUTIONS

The Namibian Constitution provides that all the fundamental rights and freedoms - which include the guarantee of sexual equality and the explicit prohibition against discrimination on the grounds of sex - "shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies."[7]

Women are still unrepresented or under-represented in most public authorities and institutions. However, Parliament has been applying an increasing amount of pressure in this area by incorporating affirmative action provisions into a number of recent pieces of legislation.

Few instances of overt discrimination against women by public institutions have been reported. The conditions of service for civil servants were recently brought in line with the prohibitions against sex discrimination in the Labour Act. For example, female civil servants were previously disadvantaged in comparison to male civil servants with respect to job perquisites such as housing benefits and medical aid schemes. The old regulations were based on sexist and outdated notions of the male as the "breadwinner" of the family. The last of these unfair and unwarranted gender distinctions were removed from the regulations governing the public service in 1994.

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[7] Namibian Constitution, Article 5

One area in which public bodies have been guilty of sex discrimination against women is in the treatment of schoolgirls who fall pregnant. As will be discussed in more detail below, school policy in the past has been to expel the girls who fall pregnant, while in most schools no action is taken against the male students or teachers who often share responsibility for the pregnancy. However, a new national policy on teenage pregnancy is presently being circulated for discussion. The envisaged new approach acknowledges the role of male and female students and teachers in issues relating to the sexual activity of school pupils. It proposes a supportive attitude for girls and boys who become parents before completing their studies, while recommending that stern measures be taken against any teacher who abuses his or her position by engaging in sexual activity with a student.[8]

2.5 STEPS TO ELIMINATE DISCRIMINATION AGAINST WOMEN BY ANY PERSON, ORGANISATION OR ENTERPRISE

The Constitution provides that all the fundamental rights and freedoms shall be respected and upheld "where applicable to them, by all natural and legal persons in Namibia."[9] The constitutional right of sexual equality and the prohibition against sex discrimination are both generally worded, and therefore presumably applicable to both government and private institutions, although this point has yet to be clarified by judicial interpretation.

The Constitution also charges the Ombudsman with "the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms ..." have occurred.[10]

In the employment context, a system of labour courts exists to enforce the provision of the Labour Act, including the prohibition on sex discrimination in all aspects of employment.[11]

However, despite the existence of these various channels for action, no instances have been discovered in which government assistance has been sought or offered to combat instances of discrimination against women by private bodies.

2.6 REPEAL OF NATIONAL PENAL PROVISIONS WHICH DISCRIMINATE AGAINST WOMEN

Women as offenders

There are only a few penal provisions which overtly distinguish between men and women, and these are not necessarily discriminatory.

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[8] See further comment on the draft policy in the chapter dealing with CEDAW Article 10, regarding school drop-out due to pregnancy.

[9] Namibian Constitution, Article 5.

[10] Namibian Constitution, Article 91(d)

[11] The Labour Act and its enforcement mechanisms will be discussed in more detail below in connection with Article 11 of CEDAW.

The Criminal Procedure Act contains provisions stating that a woman may be bodily searched or examined only by another woman.[12] These provisions should ideally be changed to gender-neutral ones which provide that all persons may be bodily searched or examined only by members of the same sex.

There are also several provisions in the Criminal Procedure Act which place limits on competent sentences for women, all of which are now irrelevant in light of post-independence developments. One provision forbids the corporal punishment of women, but it is no longer of any force since corporal punishment by state organs has been declared unconstitutional in respect of men, women and children.[13] Another section of the Act provides that the death sentence may not be carried out on a pregnant woman until after the child is born, or on a woman convicted of the murder of her newborn child - both now obsolete stipulations since the Namibian Constitution outlaws the death penalty in all contexts.[14]

Infanticide

Anecdotal evidence indicates that infanticide is an increasingly common crime, especially among young mothers. This is an area which calls for further investigation, together with a deeper understanding of attitudes about contraception and abortion as well as the availability of adequate support services for young mothers.

SOME INCIDENTS OF INFANTICIDE

In 1991, a 19-year-old girl told a court that she tried to kill her one-year-old son so that she could go back to school. The child survived, and the girl was sentenced to a fine of R400, or alternatively three months' imprisonment suspended for three years. (*The Windhoek Observer*, 2 March 1991).

According to a May 1993 press report, three newborn babies were found dead in Katutura and Khomasdal in April-May 1993, two of them strangled and one with its throat slit. (*The Namibian*, 9 May 1993)

In March 1994 the press reported that the body of a newborn baby was found at a sewerage plant in Tsumeb, having apparently been flushed down a toilet. In previous weeks, a six-month old aborted foetus was found near a secondary school in Katutura, and the body of another baby was discovered in a heap of rubbish bags in Katutura. (*The Namibian*, 17 March 1994)

In April 1994, a 2-day-old infant was found dead in a plastic bag in a Katutura river bed. (*The Namibian*, 12 April 1994)

In September 1994, a 21-year-old mother dropped her newborn infant in a toilet immediately after giving birth, but the baby miraculously survived after being discovered. A newspaper editorial commented: "As long as legal pregnancy terminations remain a non-option in Namibia such cases are bound to keep on occurring." (*The Namibian*, 7, 8, 10 and 15 September and 3 November 1994)

In October 1994, a 2-day-old baby died after being wrapped in a plastic bag and dumped in a yard in Katutura. (*The Namibian*, 17 October 1994)

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[12] Criminal Procedure Act 51 of 1977, sections 29 and 37.

[13] Criminal Procedure Act 51 of 1977, section 295(1). Corporal punishment was found to be in violation of the constitutional protection for human dignity in *Ex parte Attorney-General, Namibia: In re Corporal Punishment by Organs of State*, 1991 (3) SA 76.

[14] Criminal Procedure Act 51 of 1977, sections 277-278. Article 6 of the Constitution states: "The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia."

In June 1995, a 17-year-old girl was sentenced to 10 years' imprisonment (seven of which were suspended) for stabbing her newborn child to death. (*The Namibian*, 31 May and 22 June 1995)

In August 1995, a 23-year-old woman was sentenced to seven years' imprisonment. She had placed her 3-year-old baby boy in a plastic bag and abandoned him in a riverbed. A 24-year-old woman who gave birth to her first child at the age of 12 was sentenced to five years' imprisonment for strangling her month-old baby boy. A third woman received a suspended sentence of seven years after she pleaded guilty to murdering her newborn son by slitting his throat. (*The Namibian*, 8 September 1995)

In November 1995, police reported that a 16-year-old girl near Oshakati put her newborn baby in a bag and set it alight. She had apparently concealed the pregnancy and the birth from her family. (*The Namibian*, 10 November 1995)

Abortion

Namibia's Abortion and Sterilisation Act makes it a crime for a woman to seek an abortion, or to terminate her own pregnancy, except in certain narrowly-defined circumstances. This law (which will be discussed in detail in Article 12 below) has in practice been used as a basis for the prosecution of individual women.[15] The wisdom of criminalising abortion in this manner should be re-examined and possibly replaced with more positive approaches to preventing abortions.

Some observers have charged that the treatment of male and female offenders may be influenced by the sexual stereotypes of Namibia's predominantly male judiciary. The following excerpt is from a letter to the press written by a Namibian women's group to protest a seven-year sentence given to a 23-year-old woman for infanticide. The letter complained that the judge in the case had reportedly stated that "there was nothing wrong with (the woman's) mental state except a tendency to be promiscuous.":

"Are we to understand that 'a tendency to be promiscuous' is now considered by law to be both a crime and a mental disorder? When have we ever heard of a man receiving a stiffer sentence on the grounds that he was promiscuous?"

The letter also accused the courts of applying "double standards" to men and women:

"Your headline proclaimed that (the woman's) case has made legal history: if a woman kills her own baby in future the fact that she is the child's mother will no longer be seen as a mitigating factor. However, in sentencing a man who was recently found guilty of killing his own daughter, the court admitted the fact that he was the father of the victim as a mitigating factor. As a result he only received a N$5 000 fine or one year in prison (reported in The Namibian, *26 July 1995.)*

Sister Namibia Collective, *The Namibian*, 25 August 1995.

The question of judicial attitudes on gender issues is a difficult one to measure and can best be redressed by striving for an improved gender balance in the composition of the judiciary.

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[15] For example, the Oshakati Women and Child Abuse Centre reported three such prosecutions during 1994-95.

Women as victims

The locus of much formal sex discrimination in penal provisions relates not to women as offenders, but to men as offenders against women in sexual crimes. Here, many legal provisions inherited at independence are based on the false premises that women and girls are in need of special protection against sexual offences which is not extended to men and boys, that women have a tendency to make false reports concerning sexual offences, and that only women engage in prostitution. These laws contain discrimination against men and boys as well as against women and girls, sending out an overall message that men and women are not equal with regard to matters involving sex. These legal provisions will be described in detail in the chapter dealing with Article 3 of CEDAW.

One interesting development relating to women as criminal offenders is the consideration of a history of domestic violence as a mitigating circumstance in the sentencing of a woman convicted of culpable homicide for the death of her husband.

In a 1991 case which received significant media attention, a woman with a history of being assaulted by her husband fatally stabbed him. On the day in question, the man had already assaulted his wife twice, when she grabbed a knife to frighten him away. The court found that she had fatally stabbed him as the result of a misjudgement on her part and thus concluded that his death was caused by her negligence. However, the court gave strong consideration to the couple's history of domestic violence when considering the question of sentencing:

"'More sinned against than sinning' has frequently been a mitigation plea of defence counsel. Never has it probably been more appropriate than in [this] case. For 28 years, long years, [Mrs], you have been frequently, four to five times a year, beaten in the face and on the head. You have lived in the shadow of imminent brutal assaults, assaults which through no fault of yours would be perpetrated upon you. I have frequently condemned ... this primitive concept of certain men that marriage gives them the right to thrash their wives. If men do not like what their wives are doing, there is nothing that compels them to remain married to their wives. I have no doubt that your life has been scarred, indelibly scarred, by the life you have lived for the past 28 years. I have no doubt that this trial will leave a scar on your life, and I also have no doubt that society does not expect vengeance in these circumstances, that society does not expect that you should serve a term of imprisonment ..."

Her sentence to five years' imprisonment was suspended in its entirety for five years. (*State v X*, unreported judgement, Case No. CC119/91, 1991/11/12.)

The role of domestic violence in family crimes committed by both men and women is a topic which warrants further investigation.

Women in prison

A very small proportion of Namibia's prison population consists of women. As of December 1993, only about 4% of the total prison population was female. According to the Ministry of Home Affairs' Department of Prisons, none of these women prisoners were juveniles.

In 1992, the DWA investigated the condition of women in Windhoek Central Prison. The facilities and conditions of imprisonment were found to be reasonable - better, in fact, than the conditions in the more crowded men's section of the prison. English literacy classes and other study opportunities are available to the women who are incarcerated, as well as materials for sewing and other handicrafts. Young children are allowed to stay with their mothers up to 2yrs.

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TABLE 1: Prison population by type and sex (31 December 1993)

TYPE	TOTAL	WOMEN		MEN		WOMEN	MEN
		#	%	#	%	%	%
All types	2833	112	100,0	2721	100,0	4,0	96,0
Unsentenced prisoners	460	32	28,6	428	15,7	7,0	93,0
Sentenced prisoners	2065	49	43,8	2016	74,1	2,4	97,6
Judgement debtors	308	31	27,7	277	10,2	10,1	89,9
Other	0	0	0,0	0	0,0	0,0	0,0

CSO, *Women and Men in Namibia*, p.81 (Source: Department of Prison Services, Ministry of Home Affairs).

The women prisoners interviewed by the DWA delegation had a few complaints which were successfully taken up by the DWA with the Department of Prisons. For example, the women requested that they be allowed to retain a portion of the income derived from their handicraft projects for personal expenditure, and they expressed concern about the need for support services for family members at home. The DWA was able to coordinate action by various ministries and NGOs to respond to concerns such as these.

One shortcoming which has recently been noted is that the recreational options for women prisoners appear to be limited by stereotyped ideas about appropriate activities for women. However the Government is not aware of any fundamental problems in the treatment of women prisoners.

ARTICLE 3

General Protection of Equal Human Rights and Fundamental Freedoms

3.1 INTRODUCTION

The constitutional framework for sexual equality has been set forth in the chapter on Article 1 of CEDAW.[1] Specific legislative and policy measures which have been implemented to advance the position of women are described elsewhere in this report. Therefore, in this chapter the focus is on violence against women, since freedom from the threat of violence is a necessary precondition for the enjoyment of all other fundamental human rights and freedoms.

Conversely, violence will never disappear until women have been placed on an equal footing with men. Thus, in some ways the degree of violence against women which exists in Namibian society is a measure of the absence of true gender equality.

3.2 RAPE

The number of reported rapes in Namibia has been steadily increasing over the last few years - which could be an indication that more rapes are being committed, or that a higher percentage of rapes are being reported to the police.

There were 352 reported rapes in Namibia in 1988, 384 in 1989, 419 in 1990 and 445 in 1991. Reports of rape and attempted rape together totalled 564 in 1991, 583 in 1992, 611 in 1993 and 741 in 1994.[2]

TABLE 1: Reported rape and attempted rape cases by police district

POLICE DISTRICT	1992		1993		1994	
	#	%	#	%	#	%
All districts	583	100,0	611	100,0	741	100,0
Windhoek	199	34.1	212	34,7	259	35,0
Gobabis	55	9.4	52	8,5	64	8,6
Swakopmund	32	5.5	47	7,7	0	0,0
Otjiwarongo	40	6.9	31	5,1	51	6,9
Tsumeb	61	10,5	61	10,0	57	7,7
Rundu	28	4,8	30	4,9	25	3,4
Oshakati	85	14,6	86	14,1	109	14,7
Keetmanshoop	55	9,4	60	9,8	55	7,4
Mariental	28	4,8	32	5,2	39	5,3
Walvis Bay	N/A	0,0	N/A	0,0	82	11,1

Central Statistics Office (CSO), *Women and Men in Namibia*, p.88 (Source: Namibian Police).

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[1] See pages 47-48 above.

[2] Information from the Namibian Police and the Central Statistics Office of the National Planning Commission.

It is estimated that only about one out of every 20 rapes committed is reported to the police.[3] Based on this estimate, the number of rape victims in Namibia is roughly equivalent to the rape of approximately one woman each hour of the day, each day of the year.[4]

Rape in Namibia is defined as "unlawful sexual intercourse with a woman without her consent". This definition is problematic in several respects. Firstly, the legal interpretation of "unlawful sexual intercourse" means that it is impossible for a wife to charge her husband with rape, no matter what the circumstances. Secondly, it is gender-specific, ignoring the fact that men can also be raped - something which is known to happen in Namibia's prisons in particular. Thirdly, the focus on sexual intercourse excludes other sexual violations of the body which are just as serious, such as forced anal intercourse. Fourthly, the fact that the absence of consent is an element of the crime leads to a focus on the victim's dress, behaviour and sexual history, rather than on the use of coercion by the rapist. The result is that the woman who was raped is often made to feel as if she is the one on trial. In addition, certain inherited procedural rules reinforce the myth that women have a tendency to falsely "cry rape".[5]

Since the Namibian Constitution outlawed the death penalty, the maximum sentence for rape is life imprisonment. No comprehensive statistics are available on the average sentences being imposed for rape in Namibia at present, but Women's Solidarity - a small NGO which is active in education, counselling and research around the issue of violence against women - compiled information on the sentences imposed in rape cases in the High Court, which hears only the most serious rape cases, during the period January 1988 to November 1990. The average sentence imposed for rape by the High Court during this period was approximately six years, while the average effective sentence (taking into account suspended sentences) was four to five years. Information gathered from the 1988 court register for the regional Magistrate's Court - the only other court in Namibia with the authority to hear rape cases - indicated that the average sentence for rape was just over four years, while the average effective sentence was just over three years.[6]

Many women's groups have advocated law reform in the area of rape, arguing in particular that bail is too readily given to accused rapists and that sentences for convicted rapists are too light. Public frustrations on the issue of sentencing have led to some demands for unconstitutional options, such as the reintroduction of the death penalty or even castration.[7]

In the five years since independence, numerous appeals for law reform in this area have been made to the Ministry of Justice and the Law Reform and Development Commission (LRDC) by a diverse spectrum of organisations.

For example, Women's Solidarity has repeatedly pushed for reform of the law on rape, with specific recommendations backed up by comparative research. Among this group's recommendations are:

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[3] See *The Namibian*, 13 November 1990.

[4] See, for example, "Rape under the spotlight", *Windhoek Observer*, 18 May 1991; "Rape outrage: new statistics shock", *The Namibian*, 1 February 1991; "Namibia's women raped at one every hour", *The Times of Namibia*, 23 January 1991.

[5] A detailed discussion of these rules is contained in D. Hubbard, *A Critical Discussion of the Law on Rape in Namibia*, University of Namibia, January 1991, p.27-ff.

[6] See D. Hubbard, "Should a Minimum Sentence for Rape be Imposed in Namibia?" 1994, *Acta Juridica*, pp.228-255.

[7] See, for example, "Law on rape demands reform", *New Era*, 3-9 September 1992; "You'll never walk alone: Lüderitz women stand firm against rape terror", *The Namibian*, 6 March 1992; "Women slam "lenient" rape sentences", *New Era*, 20-26 February 1992; "Women should unite against rape" (editorial), *The Namibian*, 31 January 1992. In a recent survey of the Uukwambi area, some interviewees suggested that the punishment for a convicted rapist should be the same as that for a murderer: Namibia Development Trust (NDT), *Improving the Legal and Socio-Economic Situation of Women in Namibia: Uukwambi, Ombalantu and Uukwanyama Integrated Report, Volume I* (1994), p.78.

- revision of the definition of rape to remove consent as an element of the crime, to cover a broader range of sexual acts and to make the crime gender-neutral;
- the removal of the marital rape exemption;
- increased protection for the privacy of the victim, by providing for automatic closure of the court to the public during the victim's testimony and by making it a criminal offence to publish the name of the complainant or any information which might reveal her identity;
- prohibitions on the introduction of evidence about the victim's prior sexual experience except by express consent of the court in closed session;
- the tightening of bail conditions for accused sexual offenders, with an emphasis on safeguards to protect the victim from danger;
- a statutory minimum sentence of seven years, which could be reduced only in exceptional circumstances, such as a first offence by an extremely young person;
- treating a rape by a person who knows that he carries HIV as attempted murder; and
- mandatory HIV-testing of all persons accused of a sexual offence which carries the possibility of spreading HIV, together with free testing and counselling for the victim.

> *"We know of few other law reform issues which have received such a broad range of public support."*
>
> Women's Solidarity, *Open letter to the Law Reform and Development Commission*, 22 November 1994.

A petition which included specific requests for the reform of the laws on rape was signed by ten different NGOs and presented to the Minister of Justice as part of the commemoration of International Women's Day in March 1993. In May 1994, another petition on law reform, signed by representatives from five government ministries and 10 NGOs and again including specific demands for reform of the laws on rape, was presented to the Ministry of Justice.

In 1993, the Namibia Women's Agricultural Association made a formal request to the LRDC to consider the option of imposing a minimum penalty for convicted rapists, suggesting a five-year minimum sentence and pointing out that the prevalence of AIDS means that a rape can constitute a death sentence for the victim. The idea of a minimum sentence was supported by the Legal Assistance Centre - a public interest law firm - which provided the Government with detailed research on the constitutionality of such a step and on approaches to rape sentencing in other countries.

The Namibian Law Society, which represents all practising attorneys, suggested that consideration be given to sentencing guidelines, procedural amendments to protect the privacy and dignity of the rape victim, the removal of the marital rape exemption, and the establishment of a special rape court.[8]

In the wake of a brutal attempted rape of a woman journalist in Windhoek, the Namibia Media Women's Association presented a petition to the LRDC demanding stiffer sentences without the possibility of parole, the elimination of bail for accused sexual offenders, the establishment of special rape courts, and a system of compensation for victims.

> *"Popular opinion holds that the sentences for crimes of this nature are hopelessly inefficient as a deterrent ... In contrast, the sentences for diamond smuggling and smuggling of rhino are much heavier."*
>
> Namibia Media Women's Association, *Petition to the Law Reform and Development Commission*, 27 January 1995.

Violence against women in general has been the topic of a substantial number of grassroots demonstrations since independence. Most recently, a group of men in the Erongo region held a men-only anti-rape workshop, with the support of the Department of Women Affairs and the Directorate of

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[8] See D. Hubbard (fn.6).

Community Development in the Ministry of Regional & Local Government and Housing. In addition to calling for general law reform on the issue of rape, this workshop made a broad range of recommendations on government and community strategies to combat rape. For example, the workshop suggested that communities should form neighbourhood watches and local anti-rape committees, and that businesses should provide transport to their employees and better security at entertainment centres. It also recommended intensive rehabilitation programmes for convicted rapists and school programmes which would teach young boys to respect women and themselves.

> *"Although the issue of violence against women has been a major mobilising force among women, the attitude of men, until today, was not to interfere in so-called women issues ... [This workshop] will provide a forum to establish strategies to enable men to understand the plight of women with regard to rape."*
>
> **Opening Speech of the Regional Governor, Erongo Men-Only Anti-Rape Workshop, 21-22 July 1995, Omaruru.**

The Government recognises that there is an urgent need for reform of the rape laws, and action in this area is underway.

There has already been one change to the law on rape, as a result of a judicial decision. As noted in the discussion of Article 1 of CEDAW, the special "cautionary rule" which previously applied to the evidence of complainants in sexual offence cases was rejected by the High Court of Namibia on the grounds that it is irrational, since there is no empirical evidence that false charges are laid more frequently in sexual offence cases than in any other crime. The Court went on to say that since most complainants in sexual offence cases are women, the rule is probably also a violation of the constitutional guarantee of sexual equality.[9]

Rape under customary law

Traditional tribunals sometimes deal with rape cases in Namibia, even though they are technically forbidden by law to deal with such offences.[10] However, traditional authorities generally treat rape more as a civil matter than as a criminal matter, and parties found guilty are often ordered to pay compensation to the woman or her family.

Women in some areas have complained that these cases are not taken seriously enough by traditional leaders, noting that sometimes nothing happens to a man who ignores an order to pay compensation. There have also been complaints that women do not have the right to speak in traditional courts and that virtually all headmen are males.[11]

The role of the traditional courts in adjudicating rape cases must be re-examined in the context of the overall redefinition of the powers and functions of these courts which is currently underway. Conversely, customary law's emphasis on compensation for the victim should perhaps be incorporated into the approach taken by the civil law courts.[12]

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[9] *S v D* 1991 (1) SA 513 (Nm) at 516H-I.

[10] Rape is one of the 'Schedule A offences' which is excluded from the criminal jurisdiction of chiefs and headmen under RSA Proc. No. R.348 of 1967.

[11] Namibia Development Trust (NDT), *Improving the Legal and Socio-Economic Situation of Women in Namibia: Uukwambi, Ombalantu and Uukwanyama Integrated Report, Volume I* (1994), pp. 76, 78; Centre for Applied Social Sciences & Namibia Development Trust (CASS) & NDT, *Improving the Legal and Socio-Economic Situation of Women in Namibia: Uukwambi, Ombalantu and Uukwanyama Integrated Report, Volume II: The Legal Aspects* (1994), p.42; H. Becker, "Gender Aspects of traditional authorities and traditional courts in a democratic society: examples from northern Namibia" (mimeo), November 1995, Windhoek, p.7.

[12] See generally M.O. Hinz, *Customary Law in Namibia: Development and Perspective*, CASS, February 1995.

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3.3 OTHER SEXUAL OFFENCES

Women (or men) who have suffered unwanted sexual attention have the option of laying charges of assault or indecent assault, depending on the circumstances.

An additional legal tool to defend young women against sexual abuse is provided by the Combating of Immoral Practices Act, which makes it an offence for a male to have sexual intercourse with a girl under the age of 16, regardless of whether or not she has consented. The existence of this statutory offence makes it possible to prosecute someone who has raped a young girl, without putting the victim through the trauma of testimony on the issue of consent. However, there is no analogous protection for young boys. This sexual distinction is exacerbated by the fact that the age of consent in terms of common law is 12 years of age for girls and seven years for boys. As a result, the prosecution of sexual offence cases in which young boys are the victims is often particularly difficult.[13]

A similar anomaly in the Combating of Immoral Practices Act makes it a criminal offence to detain females - but not males - for the purpose of unlawful sexual intercourse, and to have unlawful sexual intercourse with a "female idiot or imbecile" - but not to have unlawful sexual intercourse with males who suffer from such mental disorders. While these provisions actually discriminate against men and boys rather than against women and girls, they help to undermine the notion of sexual equality in Namibia's criminal law.

Another problem with the Combating of Immoral Practices Act is its attitude towards female prostitutes. Although it is an offence for any person to engage in sexual activity with a girl under the age of 16, special defences are provided for boys under the age of 21 who have sexual intercourse with prostitutes. This implies that young female prostitutes are entitled to lesser protection than other young women.

A draft Child Care and Protection Act prepared by the Legal Assistance Centre and the University of Namibia's Human Rights and Documentation Centre at the request of the Ministry of Health & Social Services would equalise the age of consent to sexual activity at 15 for both boys and girls. It would extend the protections of the Combating of Immoral Practices Act to young boys as well as young girls, and remove the special defence related to prostitution. The draft Act containing these reforms is at the time of writing being prepared for presentation to Parliament.

Sexual harassment in the employment context is forbidden by the Labour Act, but there have been no cases brought on this point as yet.[14] However, the problem is known to exist, and women must be encouraged to speak out on this issue.

3.4 DOMESTIC VIOLENCE

There are no comprehensive statistics on the incidence of violence within the family in Namibia. Such violence is seldom reported to the police, partly because the police are often reluctant to intervene and partly because of the lack of adequate legal remedies. In those rare situations where police action is involved, the charge is usually one of the varieties of assault, which means that it is difficult to extract information about domestic violence from police records. However, it is generally acknowledged that domestic violence against women and children is a widespread and serious problem.

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[13] Combating of Immoral Practices Act, No. 21 of 1980; see also Social Sciences Division (University of Namibia), Legal Assistance Centre and UNICEF, *Children in Namibia: Reaching Towards the Rights of Every Child*, Windhoek, 1995, pp.144-146.

[14] Labour Act 6 of 1992, section 107.

Grassroots women have shown an increasing tendency to organise around the issue of violence against women in recent years. For example, a group known as Concerned Women Against Violence Against Women is active in several different communities, and men in some regions have begun to speak out on this topic.. There is also a slowly increasing number of community groups which provide temporary shelter for women and children who are afraid to remain in their homes.

The existing legal approaches to domestic violence are admittedly inadequate, and police are sometimes reluctant to take action. A woman who lays a charge of assault is likely to find the batterer home on bail within 48 hours. Furthermore, even if the batterer is ultimately convicted, the penalty is unlikely to be severe. Although it is possible for a victim of violence within the family to seek a court interdict forbidding the perpetrator to carry out any further assaults, this process is lengthy, expensive and difficult to enforce. A person who has been assaulted by a family member can also bring a civil claim for damages against the perpetrator. However, this approach, in addition to being potentially lengthy and expensive, makes little sense where the family's finances are intertwined. Thus, most women who experience domestic violence seek legal help only if the violence has become severe enough to cause serious injury, or if the relationship has broken down so completely that the woman seeks a divorce. Government-funded legal aid is available for divorce cases, and has in practice been primarily requested by women.

It is generally believed that domestic violence is connected to the high occurrence of alcohol and drug abuse in Namibia. The unresolved stresses stemming from the liberation war and the repression of the apartheid years also play a part, as well as frustrations stemming from Namibia's widespread poverty and unemployment. Most disturbingly, perhaps, in some Namibian communities violence is viewed (at least by men) as an acceptable way of exerting control in the family context.

> *"In general, the Namibian society tolerates domestic violence as a way to extract obedience and faithfulness from women. This is aggravated by attitudes that blame women for abusive acts from males ..."*
>
> Opening speech of the Regional Governor, Erongo Men-Only Anti-Rape Workshop, 21-22 July 1995, Omaruru.

More research is still needed to produce data about the incidence and causes of domestic violence, and to formulate appropriate legal and social responses.

3.5 OTHER INCIDENCES OF VIOLENCE AGAINST WOMEN

Women are the victims of other types of violence in Namibia, to an extent which has inspired some groups to speak of "femicide". As in the case of domestic violence, women are the targets for violent behaviour stemming from a range of frustrations and often intensified by alcohol or drug abuse. This issue has gathered increasing public attention recently, leading to public demands for stricter bail conditions and heavier prison sentences.

> **Reacting to the granting of bail of N$1 500 to the self-confessed murderer of a Namibian woman, the Namibia National Women's Organisation (NANAWO) handed a statement to the Minister of Justice in November 1995 demanding that there be no bail for persons charged with murder or rape, that murderers be ordered to provide for the minor children of their victims, and that murderers and rapists be sentenced to maximum periods of imprisonment with hard labour. The statement referred to the fact that three women had been shot or stabbed to death by men for petty reasons within a 10-day period.**
>
> ***"These incidences show the contempt some men have for women and their lack of understanding of human dignity and the value of life."***
>
> **NANAWO statement to the Minister of Justice, reported in *Tempo*, 19 November 1995.**

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> In November 1995, the National Society for Human Rights strongly condemned the rising incidence of brutality and violence against Namibian women and girls and called on Parliament to pass legislative measures setting stricter bail conditions and providing for more severe punishment for such offences.
>
> *Tempo*, 19 November 1995.

In order to address this problem, it will be necessary to examine patterns of violence in Namibia more closely. Also, as in the case of other forms of violence against women, a general improvement in sexual equality will help to make women less vulnerable.

> *"Woman killed over a beer"*
>
> *"A quarrel over beer led to a woman being killed with a nail gun [a commonly-available building tool] at a house in Tauben Glen on Saturday ... A 24-year-old suspect who was arrested immediately allegedly returned home to find his beer missing from the refrigerator. He became angry and started asking people who were sitting there what happened to his beer. The deceased allegedly laughed at the suspect's behaviour. He then shot her with a nail gun in the head, killing her instantly."*
>
> *The Namibian*, 13 November 1995.

3.6 WOMEN AND CHILD ABUSE CENTRES

The Government has responded to the issue of violence against women and children by establishing a network of Women and Child Abuse Centres, an initiative which is believed to be the only one of its kind in Africa.

After extensive consultations between the Namibian Police, UNICEF and a range of community groups, a Women and Child Abuse Centre was established at the Katutura Hospital in Windhoek in 1993. The purpose of this Centre is to provide a sensitive and integrated response to victims of rape or abuse, including domestic violence and child sexual abuse. At the Centre, a victim can lay a charge with specially-trained police officers, undergo a medical examination, and be referred to a social worker or to appropriate counselling groups. Similar Centres were established in Keetmanshoop and Oshakati in 1994.

During 1994, the Windhoek Centre dealt with a total of 238 cases, 121 of which involved children under the age of 18. These cases included 152 rapes, 22 cases of indecent assault and 38 assaults. During the first 10 months of 1995, the Windhoek Centre handled 213 criminal cases, 113 of which involved children. During this period, the Centre's cases included 148 rapes and attempted rapes, 21 cases of indecent assault against women and children (including sodomy with children) and 29 assaults. There were 221 general enquiries during this period, including 28 enquiries about "domestic problems" and 37 enquiries about assault or battering.

The Oshakati Centre, which opened in August 1994 and handled 83 criminal cases by the end of November 1995, including 23 rapes, five attempted rapes, five cases of indecent assault (all against boys or girls under the age of 16), 17 assaults (mostly against children), eight cases of unlawful sexual intercourse with girls under the age of 16, three cases of sodomy with boys under the age of 17, and one cases of incest. In addition, there were a wide range of general enquiries, including 288 reports of domestic violence (18 of which involved male victims) and 43 reports of emotional abuse, some of which were referred to social workers, churches or traditional leaders.

The Keetmanshoop Centre, which opened in December 1994, had handled 49 criminal cases by the end of November 1994, including 10 rapes, 10 attempted rapes, five indecent assaults, 18 assaults, and one case each of sodomy and incest. There were also a number of general enquiries during this period, including enquiries about domestic violence and other "domestic problems".[15]

In addition to providing a supportive climate for victims of violence against women, the Women and Child Abuse Centres will hopefully be able to collect more data about such cases which can be used to identify the causes of this problem more precisely, and to improve government and police responses.

The Women and Child Abuse Centres have been welcomed by the communities which they serve and are off to a strong start. At present, because of a shortage of appropriate staff, the centres are open only during daytime hours Monday through Friday, although staff members are on call 24 hours a day. Staffing limitations also mean that investigations into domestic violence cases must often be handled by other police officers, who require additional training to increase their understanding of the dynamics of such incidents. The Government hopes to consolidate and expand the services of the Women and Child Abuse Centres in the coming years.

3.7 GENDER SECTORAL COMMITTEE ON VIOLENCE AGAINST WOMEN

Violence against women is the topic of one of the nine sectoral committees which the DWA has established to bring together NGOs and government bodies. Violence, with its multiple causes and manifestations, requires co-ordinated action on a variety of fronts, making the linkage of different organisations particularly important in this area. This sectoral committee is in the process of formulating policy recommendations which will be used to guide government action to eradicate violence against women and children.

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[15] These statistics were compiled by each of the three Centres.

ARTICLE 4

Affirmative Action

4.1 CONSTITUTIONAL AUTHORISATION FOR AFFIRMATIVE ACTION

The Namibian Constitution provides explicit authorisation for affirmative action, with particular emphasis on affirmative action for women, in passages which are quoted in full in the discussion of Article 1 of CEDAW.[1]

It should be noted that these constitutional provisions, like Article 4 of CEDAW, simply make it clear that affirmative action is permissible, without requiring that any such measures be implemented. Without such an authorisation, it could be argued that affirmative action violates the constitutional provision prohibiting discrimination on the basis of race or sex.

The general provisions on affirmative action are buttressed by the chapter of the Constitution which articulates principles of state policy. One of the goals contained in this section is the enactment of legislation to ensure "equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society".[2]

Thus, the Namibian Constitution opens the door for affirmative action programmes; the challenge is in finding ways to implement the promises of the Constitution effectively.

4.2 STATUTORY AFFIRMATIVE ACTION PROVISIONS

Statutory affirmative action in Namibia has taken two forms since independence: (1) provisions which ensure the presence of women on important government decision-making bodies; and (2) general authorisations for affirmative action, which could be used as a basis for affirmative action for women.

For instance, the Local Authorities Act includes an affirmative action provision which required that political parties include a specified number of women on their lists of candidates in the first local government elections held in 1992. A similar concern is evident in a recently-enacted Traditional Authorities Act, which requires that traditional authorities "promote affirmative action among the members of that community, in accordance with Article 23 of the Constitution, in particular by promoting women to positions of leadership".[3] (These affirmative action initiatives will be discussed in further detail in connection with Article 7 of CEDAW, on women in political and public life.)

The Social Security Act requires female representation from government, trade unions and employers' organisations on the Social Security Commission,[4] and the Vocational Training Act requires a similar cross-section of female representation on the Vocational Training Board.[5] The legislation establishing the Polytechnic of Namibia requires that the Council of the Polytechnic must include one person appointed by the Minister to represent the interests of women.[6]

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[1] Namibian Constitution, Article 1, p 17 above.

[2] Namibian Constitution, Article 95(a).

[3] Traditional Authorities Act 17 of 1995, section 10(g).

[4] Social Security Act 34 of 1994, section 4.

[5] Vocational Training Act 18 of 1994, section 5(3).

[6] Polytechnic of Namibia Act 33 of 1994, section 6(2)(d).

The Namibia Sports Act requires that at least three of the 14 members of the National Sports Commission be women. The Act also specifies that the Sports Development Fund which is established for the promotion of sports in Namibia shall be used "to enhance the sports of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices" - a provision which could be used as the basis for affirmative action for women in this field.[7]

Namibia's Labour Act mirrors the Constitution by providing that the statutory prohibitions on discrimination in employment practices shall not be construed as "prohibiting any employer or person from implementing any employment policies and practices aimed at the advancement of persons who have been disadvantaged in the labour field by discriminatory laws or practices which have been enacted or practiced before the independence of Namibia".[8] Thus, there is no legal barrier to the implementation of programmes aimed at the advancement of women in employment.

The Agricultural (Commercial) Land Reform Act, which is designed to redistribute land more equitably, specifies that at least two of the 12 appointees to the Land Reform Advisory Commission must be women. The stated purpose of the acquisition of commercial agricultural land by the state is "to make such land available for agricultural purposes to Namibian citizens who do not own or otherwise have the use of agricultural land or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices."[9] Again, this is a provision which could be used as the basis for affirmative action initiatives aimed at women.

A second land bill which will focus on the allocation of communal land is expected to come before Parliament in 1996. It will be important for this bill to include more explicit attention to the position of women, who are the main agricultural producers in many communal areas and yet are seldom allocated communal land in their own right.

The Agricultural Bank Act was amended in 1991 to provide for loans on special terms "for the purpose of enabling any person who undertakes to carry on farming operations to acquire with a view to such person's advancement contemplated in article 23(2) of the Namibian Constitution or otherwise, agricultural land."[10] Although this provision could serve as a basis for affirmative action for women, it has been applied to date only with racial affirmative action in mind, being used to assist communal farmers (whether male or female) to purchase commercial farming land.[11]

Despite the existence of a significant number of laws which give explicit attention to affirmative action for women, it must be conceded that the approach taken by Parliament has not always been consistent. For example, although women are explicitly represented on the Council of the Polytechnic of Namibia, there is no analogous legislative requirement that women be represented on the Council of the University of Namibia.[12] Similarly, although seats are reserved for women on the Social Security Commission, the Labour Act contains no provisions regulating the gender composition of the Labour Advisory Council.[13] (The Labour Advisory Council has nevertheless shown sensitivity to the issue of affirmative action by requiring employers and trade unions to submit new nominations of persons to serve as assessors in the labour courts, in order to achieve a better gender balance.[14])

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[7] Namibia Sports Act 7 of 1995.

[8] Labour Act 6 of 1992, section 106.

[9] Agricultural (Commercial) Land Reform Act 6 of 1995, sections 4 and 14.

[10] Agricultural Bank Act 13 of 1944, section 46, as added by Act 27 of 1991.

[11] Information from Agricultural Bank of Namibia.

[12] University of Namibia Act 18 of 1992.

[13] Labour Act 6 of 1992.

[14] Labour Advisory Council, *First Annual Report*, Ministry of Labour & Human Resources Development, 6 May 1993 to 31 March 1994, pp.13-14. The list of assessors initially submitted by employers' organisations included only one woman out of 42 persons nominated, while the trade unions list included only 14 women of a total of 91 names.

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The laws relating to finance in particular may require re-examination to determine whether specific attention to the interests of women should be incorporated. For example, the Namibia Development Corporation Act - which includes among its objects the promotion of employment in the formal and informal sectors, as well as the promotion of Namibian entrepreneurship through the stimulation of small and informal economic activities - does not require female representation on its board of directors, nor does it make any mention of affirmative action.[15] Another important piece of financial legislation, the Namibian Housing Enterprise Act - which is aimed at providing financing to enable Namibians to provide for their housing needs - makes no mention of women or affirmative action of any sort.[16]

Such inconsistencies in the legislative approach to affirmative action should be alleviated by the establishment of a co-ordinated gender policy which will cut across all sectors, and (as discussed in Part I) the process of developing such a policy is already underway.

4.3 AFFIRMATIVE ACTION IN EMPLOYMENT

To date there have been no formal programmes of affirmative action for women in the field of employment. However, the Ministry of Labour & Human Resources Development is in the process of formulating affirmative action legislation. A consultation document was circulated for comment to trade unions, employers and NGOs in September 1995. The document outlines the ministry's tentative policy, which will be revised in accordance with the input which is received.

The ministry's basic proposal is that all employers should be required to prepare affirmative action plans targeting blacks, women and disabled persons for affirmative action. Such affirmative action plans would include the following components:

- A workforce analysis: a listing of all jobs within each department or organisational unit showing the total number of employees and the number of target group members for each job title.
- A utilisation analysis: a determination of whether the number of target group members in the employer's workforce is reasonable given their availability in the relevant workforce.
- An analysis of employment policies and practices to identify any differential impact on disadvantaged groups.
- Affirmative action measures to be implemented, including (1) the removal of employment barriers (such as bias in recruitment, interviewing and testing procedures); (2) positive measures (such as special training courses); and (3) reasonable job accommodation measures (such as steps to enable disabled persons to hold jobs and to advance in employment).
- Numerical goals and timetables which can be used to identify progress towards achieving the objectives set forth in the plan.
- Monitoring and evaluation procedures.

The crux of the proposed affirmative action policy is the goal of equal opportunity. The Government is opposed to any measure which will require employers to appoint unqualified individuals, and endorses preferential treatment only for suitably qualified persons from the target groups. Any other approach would lead to token appointments which are economically inefficient and damaging to the self-esteem of those appointed. For the same reasons the Government is opposed to the use of employment quotas.

The Ministry of Labour & Human Resources Development is contemplating the establishment of an independent agency to administer the affirmative action legislation. While this agency could take a number of different forms, it must represent the interests of employers, employees and members of the target groups. The agency will monitor compliance with the law, and may also be given the power to investigate complaints of discrimination in employment practices. Enforcement mechanisms are still being investigated, but could include sanctions, incentives (such as educational campaigns, tax advantages or preference for government contracts), or some combination of the two approaches.

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[15] Namibian Development Corporation Act 18 of 1993.

[16] Namibian Housing Enterprise Act 5 of 1993.

Affirmative action is a temporary measure which should be discontinued once it has achieved its objectives. Moreover, it is a delicate policy instrument which must be fine-tuned to ensure that it is appropriate to local circumstances. Therefore, the ministry envisages a periodic review of the affirmative action legislation by Parliament.

After comments on the proposed affirmative action policy have been received, the ministry plans to continue the consultative process through a series of workshops in 1996. In this way, the legislation which is ultimately proposed will have the support and understanding of interested groups.[17]

4.4 AFFIRMATIVE ACTION IN GOVERNMENT POLICIES AND PROGRAMMES

Another form of affirmative action gradually becoming more common in Namibia is the special attention given to the inclusion of women's concerns in policy formulation and programme implementation. For example, the Ministry of Agriculture, Water & Rural Development is giving special attention to the development of gender-sensitive approaches to planning, as well as to techniques for integrating women into agricultural development programmes. Another example is the National Literacy Programme, which sent its trainers on a course designed to sensitise them to gender issues and took into consideration matters such as how the location and timing of literacy classes would affect women's participation.

However, as in the case of statutory provisions on affirmative action, it is acknowledged that policy and programme initiatives such as these need to be co-ordinated into a more consistent and comprehensive plan of action. In addition, the Government recognises that meaningful affirmative action must move beyond specific legal requirements to more wide-ranging attempts to address the social practices and cultural attitudes in which the subordinate status of women is rooted.

It is expected that a more sophisticated integration of affirmative action for women in various fields will be achieved by the development of the national gender policy and by the consolidation of the Gender Network described in Part I of this report. It is also realized that women are always represented in committees and kinds which are decided upon by the Cabinet.

4.5 AFFIRMATIVE ACTION FOR THE "GIRL CHILD"

In the international activities which took place around the Fourth World Conference on Women in Beijing, Namibia was instrumental in lobbying to include the position of the "girl child" as a critical area of concern in the Global Platform for Action.[18] At the corresponding NGO Forum in Beijing it was agreed that each country should select one field in which it could take the lead, and Namibia is to lead Africa in affirmative action.[19] As a result, the NGO Preparatory Committee which mobilised NGO participation in the Beijing meeting has developed a proposal for affirmative action for the girl child which complements the government initiatives on affirmative action.

The objective of the proposal is to prepare young women to take on leadership positions in the Namibian women's movement. The initiative envisages four phases, beginning with support to selected young girls in Grades 8, 9 and 10. In addition to providing funding for their education, the programme

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[17] Office of the Labour Commissioner, *Affirmative Action in Employment Consultation Document*, Ministry of Labour & Human Resources Development, September 1995.

[18] Republic of Namibia, *Final Report of the National Preparatory Committee to the Fourth World Conference on Women*, December 1995.

[19] NGO Preparatory Committee, *Report: Fourth World Conference on Women, Beijing*.

/...

would provide general academic and social support. Trainees would be given the opportunity to participate in workshops or community development work during school vacations, and they would be part of a "Big Sister" programme which would link them with adult mentors who are well-established in their respective communities. Support for promising trainees would continue into Grades 11 and 12, and then into tertiary education. The final phase would be a permanent network of young women who have passed through the programme and can provide ongoing support to each other in promoting the interests of women.

This programme can be implemented only if the necessary funding can be obtained. It was suggested at Beijing that it could function as a pilot project which could then serve as a model for similar programmes in other countries in Southern Africa, thus perhaps ultimately leading to the formation of an international network of capable and motivated women well-placed to take on leadership roles.

Another effort from NGOs is the provision of scholarship to high school girls to complete their secondary education.

4.6 MATERNITY PROTECTION

Adequate maternity protection is one way to make sure that women are not disadvantaged in the labour market. One of the goals of state policy enshrined in the Namibian Constitution is the enactment of legislation "to provide maternity and related benefits for women".[20] This statement leaves no doubt that such measures will be interpreted as being consistent with the constitutional prohibition on sex discrimination.

Various aspects of maternity protection, including a requirement that all female employees who have been working for at least one year for the same employer are entitled to 12 weeks of maternity leave, are provided by the Labour Act. This entitlement to maternity leave was recently supplemented by the Social Security Act, which establishes a Maternity, Sickness and Death Benefit Fund to which all employers and employees, male and female, must contribute. This fund provides financial support for women during their maternity leave. These laws will be discussed in detail under Article 11 of CEDAW on employment.

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[20] Namibian Constitution, Article 95(a)

ARTICLE 5

Sex Role Stereotyping

5.1 INTRODUCTION

There is very little concrete data available on sex role stereotyping in Namibia, and research is needed to provide more information on the changing roles of women in all aspects of economic and social life, especially since independence.

Within family structures, women are still usually subordinate to men. Although women may have autonomous decision-making power in certain spheres of family life, they are usually subject to the control of husbands or male members of the extended family in important aspects of their existence. In general, women are viewed as economic attachments to men, and their financial contributions are often seen as supplementary rather than as vital to a household's survival.

The central role that women play in maintaining the present labour force and nurturing the labour force of the future is overlooked. In the rural areas especially, where women do more and more work with fewer resources at their disposal, their oppression increases while their status declines.

Men's control over women is reinforced by religious beliefs and cultural practices that assign less power and status to women, and by the fact that women are still at a disadvantage in terms of both general law and customary law. Male dominance is often asserted by means of actual physical violence against women.

Male control over women in the household acts as a barrier to women's effective participation in public affairs. For example, women may hesitate to join organisations because evening meetings are frowned upon by their husbands, and they may refrain from taking formal employment or standing for public office unless they have their husbands' approval and consent.

While law reforms aimed at entrenching social and economic justice for women may help to encourage greater equality in areas of private life which are generally beyond the reach of the law, the law reform process is itself affected by the prevailing gender dynamics. Women who have suffered subordination often lack the confidence to make their voices heard on issues affecting them, and many men feel that law reform in favour of women threatens to erode their control over women's labour and sexuality.

Today, more and more women are opting to remain single or to get a divorce in order to enjoy a measure of independence: to have the freedom to do what they want to do, go where they want to go and become financially self-sufficient. Female-headed households are on the increase, and women are starting to take control of their own lives.

> *"It is better to stay without marrying, because if you are married, you are independent, but if you are married like my parents for example, then the father has the control over the money and you cannot buy the dress you want to have because he makes this decision."*
>
> 19-year-old single mother[1]

5.2 SEXUALITY TODAY

Practically all communities in Namibia are uncomfortable talking about sexuality as an intrinsic part of everyday life. This is particularly apparent in conversation between different genders and generations. Namibia, like many other African countries, has yet to come to terms with the issue of sexuality, at a time when political, economic, social and cultural changes which have affected ideas about sexuality - and sexually transmitted diseases - have affected societies the world over. Considering that the act of sex brings about life, and sometimes death, the aversion to confronting important issues relating to sex may well be catastrophic for Namibia.

The act of sex has to be understood as a basic need in human life - for procreation or as an expression of affection and intimacy - but where culture and religion have linked it strictly to a moral code of conduct, sex becomes shrouded in secrecy and silence. Most Namibian languages do not have a neutral word for "sex" and parents experience great difficulty in explaining sexual matters to their children. Translations of missionary teachings in several indigenous Namibian languages claim that sex is "the source of sin" and "an act that brings shame".

In earlier times, different Namibian communities had their own built-in mechanisms (such as initiation rites) for educating the young and inexperienced in the art of appropriate sexual conduct before and after marriage. However, in modern-day Namibia, the language and symbolism once used to transmit knowledge about this 'taboo' subject are no longer appropriate. The result is ignorance and blundering on the part of curious and energetic youths now left alone to discover the realm of sexuality in a world full of ambiguity and confusion on the subject.

The consequences of sex, such as pregnancy and disease, are unknown to thousands of Namibian adolescents, and the climbing rates of unwanted teenage pregnancy and sexually transmitted diseases are placing strain on traditional family life. There was a time when the extended family could absorb and nurture all children born to their own, without prejudice, with all members of the family and community caring for the newly-arrived. Today, the lack of space and resources make such communal harmony impracticable for many families.

Promising young women are deprived of their educational opportunities when they drop out of school due to pregnancy. Many pregnant schoolgirls are even expelled from school in case they should act as a "bad influence" on others.[2] The boys or men - sometimes teachers - who fathered these children do not leave school and are almost never disciplined or expelled for their part in conceiving the child.[3] While these consequences will soon be altered by a new policy on pregnancies among learners (discussed below in the chapter on CEDAW Article 10), it is harder to alleviate the personal, social and financial strain brought about by unplanned children.

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[1] A. Iken, M. Maasdorp, C. Solomon, *Socio-Economic Conditions of Female-headed Households and Single Mothers in Namibia's Southern Communal Areas (Final Report)*, UNAM Social Sciences Division and UNICEF, December 1994, p.31.

[2] See also "Causes of drop-out" in the chapter on Article 10 of CEDAW dealing with Education.

[3] See also the sections regarding maintenance in the chapters on Articles 13 and 16 of CEDAW.

AIDS is a serious threat in Namibia, as it is in other countries, making the silence of Namibians on the subject of sex a life-threatening matter.[4] A recent television news item shocked the nation when it exposed the extent of ignorance about AIDS among Grade 12 learners in a northern school. The girls and boys interviewed had absolutely no idea of what this pandemic meant - some believed it was a scam dreamed up by whites to annihilate blacks - and all of these youths were sexually active.

Academic studies indicate that such a lack of knowledge is typical.[5] Women are particularly affected by a lack of information, not only about the transmission of HIV through sexual contact, but also through child-bearing and breastfeeding.

The Government supports educational efforts on topics such as the use of condoms, and the Ministry of Basic Education & Culture is in the process of introducing family life education into the school curriculum. However, many churches and other community organisations still oppose open discussion of topics relating to sex.

Family life education in schools should also cover women's rights, and particularly the right a woman has to say "no" to sex. "Yes" and "no" in Namibia are sometimes interpreted in an odd way: women have been taught to say "no" when they mean "yes" and that to say "no" makes a woman good; men feel that "no" means a challenge to their ability to persist, and that the use of physical power to conquer is acceptable. Public education campaigns which touch on sexuality should emphasise the fact that men and women have equal rights to dignity, including equal rights to sexual autonomy.

5.3 WOMEN AS MOTHERS

In many Namibian communities, women's personal identity is tightly bound to motherhood. Women are sometimes referred to as "the nation's mothers" in public discourse, and in private relationships it is not uncommon for a man to insist that a woman "prove her fertility" before he will contemplate marriage - a challenge which often results in children born to single mothers who receive no financial or emotional support from the father.

The strong stereotype of women as mothers makes it difficult for women to choose other paths. This stereotype also makes it easier for men to shirk their duties as parents. For example, a recent newspaper article referred to a promiscuous woman with two "fatherless" children, reflecting the prevalent view that women bear sole responsibility for contraception as well as child care.[6]

This aspect of sex role stereotyping is deeply-embedded and can best be countered by the increased presence of women in political and public life, to offer alternative role models for young women.

5.4 EDUCATION

The chapter dealing with education under Article 10 of CEDAW will provide relevant gender statistics and commentaries. Suffice it to say in this section that gender stereotyping is still alive in Namibian schools, although it is slowly diminishing. Female enrolment has increased in courses generally perceived as "maleorientated", such as science and economics, and since independence there has been a shift away from "home economics" activities to "income-generating" activities, which aim to provide women with the means to become financially self-sufficient. However, there is still scope for greater "affirmative action" in school career guidance activities.

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[4] For information about AIDS prevention, see the chapter on Article 12 of CEDAW dealing with health care.

[5] See, for example, R.F. Zimba & M.L. Mostert, "The Namibian Secondary School Students' Cognitive, Attitudinal and Behavioural Risks that May Promote HIV Infection and the Spread of AIDS", in K.K. Prah (ed), *Social Science Research Priorities for Namibia*, University of Namibia, 1993; and SIAPAC/NANASO, *Sexual Knowledge, Attitudes and Practices Among Namibian Youth: A Baseline Survey*, Windhoek, June 1995.

[6] See *The Namibian*, 26 July 1995.

The Government has taken concrete action to combat gender stereotyping within the education system. For example, the Education, Training and Employment gender sectoral committee facilitated by the DWA has targeted school personnel for a series of regional gender-sensitisation workshops which will cover a range of topics - including gender analysis, gender in the school curriculum, gender imbalances in school personnel and teenage pregnancy. The first workshop was held in 1995, with more planned for 1996/97. Primary school principals have been selected as the focus for the initial workshops, to be followed by secondary school principals.

The DWA has also helped to facilitate a gender-sensitisation workshop for personnel employed by the National Institute for Education Development (NIED), with the aim of encouraging the development of more gender-aware curricula. Efforts such as these will be continued for as long as necessary.

However, school performance is often affected by attitudes about gender outside the classroom. For example, regarding school pass rates, urban females fare much better than rural females. One explanation for this is that the cultural and socio-economic circumstances of rural life place females at a disadvantage. In the typical Namibian village, girls and young women are expected to fetch and carry water and firewood, care for children, cook and clean, while boys and young men perform less time-consuming tasks and therefore have enough time (and energy) to pursue educational activities. Also, boys may be given preference if a family lacks the funds to send all the children to school. Thus, in some rural areas, gender stereotyping leads to decreased educational opportunities for young girls and so helps to perpetuate the prevailing gender roles.

Informal training programmes abound in Namibia,[7] but while women express enthusiasm about these programmes, there is the view that they rely heavily on donor assistance and few have achieved the objective of providing women with a sustainable income. In any case, most programmes see women still performing stereotypical tasks such as needlework and tailoring.

> *"If I was educated I would have been working and earning money, but my parents did not agree with educating a daughter and I can't even help myself. So I have proof that education is important for girls as well as boys. If possible I must go for adult education and learn. But now I am facing a lot of trouble because I want all my children to be educated but there are too many of them and there is no one to help me."*
>
> Woman interviewed about her employment opportunities, Windhoek, September 1995.

Gender stereotypes have also affected the outreach of the National Literacy Programme (NLP). The majority of NLP facilitators and students are women (72% and 77% respectively). One factor behind the low male participation in the programme is that men do not want to be taught by women and they do not want to be seen that they don't know how to read and write. This point is particularly disturbing given that 60% of all teachers in Namibia with formal teacher training are women.[8]

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[7] See, for example, the section on cultural life in the chapter dealing with Article 13 of CEDAW.

[8] See Table 15 in the chapter on Article 10 of CEDAW dealing with education.

Perceptions such as these are difficult to tackle through government programmes. However, the increased visibility of women in a range of public roles and careers may gradually help to bring about changes in attitudes.

5.5 PORTRAYAL OF WOMEN IN THE MEDIA[9]

The way in which women are portrayed in the media depends very much on who is doing the portraying; different print or broadcast media services and different producers have different policies and points of view about the depiction of women. Namibia does not have a film industry to speak of apart from the wildlife and development documentaries produced by private film-makers or the parastatal Namibian Broadcasting Corporation (NBC), and home-grown drama productions for television and radio are non-existent. Only one of the seven available television channels is a Namibian service, while the others are all South African services. NBC radio has six services broadcasting in the major indigenous languages. Although the portrayal of women by the Namibian media has not yet been studied in detail, age-old gender stereotypes appear to prevail.

NBC National Radio broadcasts a daily programme called "Women's World", which focuses mainly on recipes and other household issues. Television advertisements, in particular, still mostly show men promoting business concerns and women promoting household products, although occasionally the roles are switched. Adverts for 'do-it-yourself' household equipment and cars portray both men and women, but men still take centre stage when it comes to more complex techniques and machinery, and the women who drive up-market cars are inevitably beautiful models portrayed either as business executives or doing nothing at all. A great deal of advertising depicts the family situation with dad playing with the kids while mom performs household chores. This kind of media stereotyping is still a worldwide phenomenon and is partly influenced by public tastes and perceptions. However, the NBC could perhaps consider adopting an advertising code which takes gender portrayals into account.

Women are generally well-represented in NBC television panel discussions and other current affairs programmes, except for those focusing on economic issues, in which women seem entirely absent. Many prominent Namibian women are invited to join talk shows and panel discussions on political, social and cultural affairs, and these women help a great deal to ensure that the voice of Namibian women is heard. The NBC has also made an effort to address gender issues with a series of television and radio programmes which have addressed issues such as maintenance, abortion and prostitution, as well as law reforms aimed at realising sexual equality.

Although the print media has given increased coverage to women's issues since independence, scantily-clad women are still a weekly feature in one national newspaper. However, urgent issues such as violence against women have received prominent and consistent attention in a variety of newspapers.

The Government is in the process of drafting new legislation to regulate pornography, and particularly its availability to children. There are no mechanisms in place to administer the South African legislation inherited at independence and action to fill this gap is clearly needed.

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[9] For information on women in the media workforce, see section 7.7 in the chapter on Article 7 of CEDAW - Women in Political and Public Life.

5.6 THE MISS UNIVERSE BEAUTY PAGEANT

The Miss Universe Beauty Pageant held in Windhoek in May 1995 was the biggest event to take place in Namibia in 1995. It was a highly publicised event which captivated the nation and was supported by both the private and public sectors. Government spending on this event was substantial at around N$6 million.

The primary motivation for the Government's involvement with the pageant was the desire to increase Namibia's international profile. Other countries which have hosted "Miss Universe" have reported a significant increase in tourism as a result of the international publicity. In the case of Namibia, Americans flocked to the Namibian Embassy in New York after the pageant was broadcast to find out more about the country.

Other events were organised during this period to promote women, such as an exhibition at the National Art Gallery initiated by a group of Namibian women to portray women in an alternative light to that of the 'beauty queen'. This 'silent protest' was intended to show that women contribute to the development of society regardless of their physical attributes. However, this art exhibition was not as successful as expected due to poor media coverage, lack of funds to pay for advertising, lack of public interest and poor attendance. Artists came from all over Namibia to exhibit their work, but none were interviewed by the media, and ultimately there were very few sales.

During the weeks prior to the pageant the national broadcast media initiated a series of programmes on issues relating to women's development, also in an attempt to show women in an alternative light. However, broadcast coverage of the pageant was so strong that coverage of concurrent events and other women's issues was overshadowed.

A widely publicised panel discussion on beauty pageants organised by a local NGO stimulated a lively national debate on the subject. Most panellists expressed their opposition to beauty pageants, on the grounds that they reinforce negative gender stereotypes. After media publicisation of this panel discussion, NBC Radio talk shows were beset for days with callers voicing their opinions for and against the pageant. Debates such as these may have helped to encourage members of the public to give greater consideration to the impact of events such as "Miss Universe" on attitudes about men and women.

> *"Most of those attending a panel discussion at the Namibia-German Foundation on Wednesday evening were opposed to beauty competitions. Panellists included Len le Roux of Rössing Foundation, Nepeti Nicanor of New Namibia Books, Maria Kapere of the Department of Women Affairs and Athol McLean, father of Miss Universe 1992, Michelle McLean [a Namibian] ...*
>
> *"Nicanor challenged anyone to show that a black woman had ever won the major beauty competition, and claimed they were racist and based primarily on Western concepts of beauty. Nicanor also criticised Windhoek Mayor Bjorn von Finkenstein, asking how could he be taken seriously when he named bridges and roads after Miss Universe. While the Municipality was concentrating on Miss Universe, it had been slow to educate people on vital issues such as saving water. She said the Municipality, which has hardly named any streets after women, should name them after women such as Putese Appolus who had made a contribution to Namibia's liberation, and not Miss Universe.*
>
> *"'Our leaders have betrayed us,' Nicanor said, adding that the President should have made a point of meeting women to find out what they thought about events such as Miss Universe. If it was truly 'beauty with a purpose', she questioned, and if intelligence counted, then women could have written proposals to get monies for charity rather than 'parade naked from one country to another.' The Government had failed in every way to lure investment to this country so their final attempt was a case of 'let's use women.' Nicanor demanded a report-*

/...

back from government after the event to establish what had been gained from the holding of the pageant in Namibia.

"Len le Roux similarly opposed beauty pageants, saying they reinforced the traditional roles of women. Where beauty queens were active in community work, these areas did not challenge gender roles, he said. The holding of Miss Universe in Namibia could inject short-term funds and give publicity, but, he added, there was a price attached and real needs such as drought, poverty and unemployment were not addressed and women remained disadvantaged. Regarding the benefits to tourism, Le Roux said Namibia was barely able to build the hotel in which the pageant was to be housed, let alone cope with an influx of tourists. Sixty percent of Namibia's tourists came from South Africa, and the pageant was unnecessary to focus their attention on Namibia. He questioned whether anyone could actually remember where Michelle McLean had been crowned Miss Universe in 1992.

"Maria Kapere put forward both the pros and cons of beauty pageants, but in later questioning acknowledged she was in fact opposed to them. She said the face of beauty pageants had changed over the years and they were no longer as exploitative as in the past. The Constitution granted everyone the right to choose, so participation in such contests could not be prohibited. However, she added that Michelle McLean for example had developed self-confidence and assisted the disadvantaged. She suggested Namibians reframe the context of beauty contests so that the effect was primarily a positive one ..."

Report in *The Namibian* following the Miss Universe beauty pageant in May 1995.

ARTICLE 6

Prostitution and Trafficking in Women

6.1 PROSTITUTION

Prostitution in Namibia is governed by the pre-independence Combating of Immoral Practices Act,[1] which was based on the South African Immorality Act, 1957. Like the South African act, the Namibian act prohibits the keeping of brothels, the procurement of prostitutes, soliciting by prostitutes, living on the earnings of prostitution and the enslavement of women for sexual purposes.

A number of the act's offences are based on the notion of "unlawful carnal intercourse", which is defined as carnal intercourse between persons who are not married or who are not partners in a customary union under traditional law.

The offence of keeping a brothel is punishable by imprisonment for up to three years, or by both imprisonment and a fine of up to N$3 000. Procuration is punishable by imprisonment for up to five years; there is no option of a fine.

The act of prostitution *per se* is implicitly covered by section 7 of the act which is headed "Enticing to Commission of Immoral Act":

> *Any person who -*
>
> *a)* *in any public street or place entices, solicits or importunes or makes any proposals to any other person for immoral purposes;*
>
> *b)* *wilfully and openly exhibits himself in an indecent dress or manner at any door or window or within view of any public street or place or in any place to which the public have access,*
>
> *shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.*

The act also outlaws pimping by providing that living on the earnings of prostitution and assistance in relation to the commission of an immoral act is unlawful and subject to a fine of not more than N$3 000 or to imprisonment for up to three years. It also includes a section which conceivably prevents sex slavery and trade in prostitution by outlawing "detention for the purposes of unlawful carnal intercourse":

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[1] Act 21 of 1980.

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13.(1) Any person who -

(a) takes any female to any house or place or detains her there against her will so that any male, whether a particular male or not, may have unlawful carnal intercourse with her; or

(b) takes any female to a brothel or detains her there against her will,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding seven years.

(2) When in any prosecution in terms of subsection (1) it is proved that a female was in any house or at any place so that any male, whether a particular male or not, could have unlawful carnal intercourse with her, or was in any brothel, it shall be deemed that she was taken or detained there against her will -

(a) if she is under the age of sixteen years; or

(b) if she is sixteen years or older but under the age of twenty-one years, and was taken thereto or is detained therein against her will or against the will of her father or mother or any person having the lawful care or charge of her.

The penalty here is imprisonment for up to seven years. There is no option of a fine. This section applies to females only, and the act fails to afford any analogous protection to males. Thus, some of the statutory provisions on prostitution are admittedly still inconsistent with CEDAW and with Namibia's Constitutional provisions on sexual equality.[2]

Public solicitation by a person of either sex is clearly unlawful in terms of the Combating of Immoral Practices Act. However, whether or not the act of engaging in sex in exchange for a material reward is in itself criminally punishable is a debatable point which has not yet been argued in the Namibian courts.[3]

Information from the Namibian Police (NAMPOL) indicates that there were few arrests for prostitution-related offences in 1994; four women were arrested for solicitation, and there were a very small number of arrests on other prostitution-related charges. However, NAMPOL policy on prostitution is unclear. In 1994, one prominent police spokesperson publicly advocated replacing the criminalisation of prostitution with regulation, while another more recently spoke of plans to intensify action against prostitutes.

There have been no formal studies of prostitution in Namibia, although it is known to be a practice engaged in by men and women, as well as by children of both sexes. Namibia is also chacterised by sexual relationships which, while not exactly prostitution, are premised on the provision of cash or gifts by "boyfriends".

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[2] As discussed above in the chapter dealing with Article 3 of CEDAW the same problem exists with portions of the Combating of Immoral Practices Act aimed at certain sexual offences unrelated to prostitution.

[3] See, for example, J. Milton, "Prostitution: Current Debates" in S. Jagwanth, P.J. Schwikkasd & B. Grant (eds), *Women and the Law*, HSRC Publishers, Pretoria, 1994, p.135-ff. Although the Combating of Immoral Practices Act does not make the provision of sex for money an offence if carried out in private, it is arguably an offence in terms of the common law concept of "unlawful sexual intercourse".

The following finding comes from a 1991 survey of 100 unemployed women between the ages of 15 and 30 in Katutura:

> ***"Nearly a fifth of the survey group live with a 'boyfriend'. 64% of the respondents who live with their 'boyfriends' also receive cash from them. The 'boyfriends' are typically older and richer than their female partners. When the couple do not cohabit, the relationship is irregular and may last only a few months. The men are typically married and only in a limited number of cases do they continue to support the women after they have fallen pregnant. While this type of social arrangement does not constitute prostitution in a conventional sense ..., it does point to the disadvantaged position and vulnerability of many young women in Katutura."***
>
> M. Lewis & G. van Rooy, "A Study of the Prospects for Training of Young Unemployed Women in Katutura", NISER, University of Namibia, December 1991, pp.5-6

Some commentators have argued that while it is desirable to prohibit public manifestations of prostitution, there is no need to prohibit the occupation in and of itself. It is to be hoped that an emphasis on the need to prevent the spread of sexually transmitted diseases will prevail over the ethic of punishment, particularly in the Namibian context where children and adults often turn to prostitution out of financial desperation.

> *"If you are poor and you do not have any assistance and nobody is going to love you, you have to do something for yourself to just live in the world, so there is nothing wrong with prostitution because you are doing a business to survive."*
>
> *"There is nothing wrong with prostitution. It is my business. I feed my kids from this money. I'm looking for work but I don't get it. What can I do?"*
>
> Female prostitutes questioned on NBC television talk show, *Talking Point*, February 1994

6.2 INTER-COUNTRY ADOPTION

Namibia has strong safeguards to prevent the abuse of inter-country adoptions for purposes of exploitation.

At present, persons who are not Namibian citizens living in Namibia may adopt a Namibian child only if they are married to a Namibian citizen resident in Namibia, if they are related to the adoptive child, or if they are eligible to become naturalised citizens and have already submitted a citizenship application.[4]

The draft Child Care and Protection Act currently under consideration by the Ministry of Health & Social Services would expand the possibility for inter-country adoptions somewhat, in line with the role of inter-country adoptions envisaged by Article 21 of the UN Convention on the Rights of the Child.[5] Permanent residents of Namibia and Namibian citizens living outside Namibia would become eligible to apply for adoptions, and other persons outside Namibia would be permitted to adopt provided that they obtained written consents from both the Minister of Health & Social Services and the Minister of Justice, to be given only in the best interests of the child. As under existing law, all adoptions would continue to be approved by children's courts which are charged with looking after the welfare of the child. These safeguards should continue to ensure that inter-country adoptions do not become avenues for trafficking in young girls.

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[4] Children's Act 33 of 1960

[5] Article 21(b) of this convention identifies inter country adoption as an "alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin"

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ARTICLE 7

Women in Political and Public Life

7.1 EQUAL RIGHTS TO VOTE, HOLD OFFICE AND PARTICIPATE IN NON-GOVERNMENTAL ORGANISATIONS AND ASSOCIATIONS

Women in Namibia do not suffer any legal disabilities respecting the right to vote or hold office. The Namibian Constitution guarantees that all citizens who have reached the age of 18 years shall have the right to vote, and that all citizens who have reached the age of 21 shall have the right to be elected to public office - except to the office of President, which is open only to Namibian citizens by birth or descent who have reached the age of 35.[1]

In addition, all citizens, male and female, have a constitutional right "to participate in peaceful activity intended to influence the composition and policies of the Government," "to form and join political parties" and "subject to such qualifications prescribed by law as are necessary in a democratic society, to participate in the conduct of public affairs, whether directly or through freely-chosen representatives."[2]

The right of all persons in Namibia - not just citizens - to participate in political and public life is further protected by the constitutional guarantees of freedom of speech and expression, freedom of thought, conscience and belief, freedom of religion, freedom of association, which includes the freedom to form and join associations or unions, including trade unions and political parties, freedom of movement, and freedom to practise any profession, or carry on any occupation, trade or business.[3] All of these protections apply equally to men and women in Namibia.

There are disabilities, however, on the right of women to participate in public life by acting as directors of companies or as trustees. Because of the common-law concept of "marital power", married women who did not specifically exclude their marriages from the operation of marital power by means of an antenuptial contract need written permission from their husbands in order to perform these functions. These disabilities would be removed by a Married Persons Equality Act, which is before Parliament at the time of writing (December 1995).

7.2 WOMEN IN PARLIAMENT

The ratio of women in Parliament is small. Namibia's Parliament consists of two houses. The National Assembly, which is the only house with direct law-making power, is composed of 72 members chosen on a party list system. This means that voters cast their ballots for the political party of their choice and seats are filled on the basis of proportional representation from the list of candidates prepared by each party. The President also has the power to appoint six non-voting members of the National Assembly on the basis of their special expertise, status, skill or experience.

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[1] Namibian Constitution, Article 17(2) and 28(3). These rights "may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in a democratic society." Article 17(3).

[2] Namibian Constitution, Article 17(1).

[3] Namibian Constitution, Article 21.

The other house of Parliament, the National Council, has the power to raise objections to proposed laws and to recommend legislation on matters of regional concern. Two National Council members are elected by the members of the Regional Councils of each of Namibia's 13 regions. These Regional Councillors are in turn directly elected by the voters in separate constituencies in each region.

The members of the first National Assembly were elected in 1989, in the first free and fair election ever held in Namibia, carried out under the supervision of the United Nations. A second National Assembly election was held in 1994. The National Council came into existence in the wake of a 1992 regional election, which could be held only after regions and constituencies were delimited and enabling legislation enacted.

The first election for the National Assembly resulted in a body in which only five out of the 72 elected members in the National Assembly were women (6,94%). One additional woman was among the six non-voting members of the National Assembly appointed by the President. The percentage of women was more than doubled after the second National Assembly election, after which 10 of the 72 elected members of the National Assembly were women (13,9%), again with one additional woman among the six non-voting members appointed by the President. Since then, one vacant seat has been filled by another woman, raising the present percentage of women among the 72 voting members of the National Assembly to 16,7%.

The absence of larger numbers of women is a direct result of the number and position of women on the party lists of the various political parties, which stems in turn from the continuing male dominance of party structures. For example, the party hierarchies of the two political parties which gained the highest number of seats in the National Assembly in both the 1989 and 1994 elections - SWAPO and the DTA - are overwhelmingly male. According to information supplied by party representatives in 1993, in SWAPO there were two women out of 21 members in the Politburo (9,5%) and 10 women out of 70 members in the Central Committee (14,3%). The DTA Executive Committee had two women out of 55 members (3,64%) and eight women out of 96 members of the Central Committee (8,33%).[4]

The pool of women available for election to the National Council was small, as a result of the small numbers of women who were put forward as candidates by the participating political parties. Each of Namibia's 13 regions was divided into 6-12 constituencies for purposes of the election. Candidates could be nominated by political parties, or they could run as independents if they could demonstrate the support of at least 100 registered voters in the relevant constituency.

Of the 195 regional candidates fielded by six political parties, only 12 (6,15%) were women, and only three of the 95 persons elected as regional councillors were women (3,16%). There is only one woman among the 26 members of the National Council drawn from the Regional Councils (3,85%).[5]

The failure of political parties to nominate more women as candidates, or to place more women on party lists, may have been due in part to public attitudes about the role of women in politics. For example, in an exit-poll survey of 1 500 voters (52% male and 48% female) conducted by the University of Namibia in the 1992 regional and local elections, about one-quarter of the respondents said that they would find it difficult to vote for a woman candidate. The major reason given for this opinion was that "women are not suitable." The poll results indicated that women found it as hard as men to vote for a woman candidate; almost equal percentages of men and women thought that "women are not suitable" for political office.[6]

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[4] D. Hubbard & K. Kavari, *Affirmative Action for Women in Local Government in Namibia*, Legal Assistance Centre, June 1993, p 19.

[5] *Ibid*, p 17.

[6] W. Pendleton *et al*, *Exit Poll Survey Report for the 1992 Namibian Regional and Local Elections* (working document), University of Namibia, February 1993, p 34.

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7.3 AFFIRMATIVE ACTION IN NAMIBIA'S FIRST LOCAL GOVERNMENT ELECTIONS

Women are present in substantially greater numbers on Namibia's local authority councils, due in great part to the operation of a statutory affirmative action provision.[7]

Namibia's Local Authorities Act establishes three types of local authorities - municipalities, towns and villages - which are classified on the basis of their ability to deliver services to their residents and their capacity for financial autonomy.[8] Each of these three types of local authorities is governed by a democratically-elected council which consists of 7-12 members.

The first local authority elections were held at the same time as the elections for regional councils, in late 1992. Local authority councils, unlike regional councils, were elected on the basis of party lists, under a system of proportional representation. The Local Authorities Act required that a specified number of women be included on each of these party lists, depending on the size of the council in question. Any political party was, of course, free to include *more* than the specified number of women on its party list if it so wished.

The precise wording of the affirmative action provision is as follows:

> *(3) For the purposes of any election contemplated in paragraph (i) of subsection (1), each party list shall contain:-*
>
> *(a) in the case of a municipal council or town council consisting of 10 or fewer members or a village council, at least two; or*
>
> *(b) in the case of a municipal council or town council consisting of 10 or more members, at least three,*
>
> *names of female persons as candidates in respect of such elections.*[9]

Out of a total of the 1 006 candidates who were put forward on party lists in the 1992 local government elections, 382 (37,97%) were women. This is *more* than the affirmative action provision required, indicating that political parties tended to apply the spirit of affirmative action rather than only what the letter of the law required.

Although it might have been assumed that there would be greater political participation by women in urban areas, women candidates were fairly evenly spread through municipalities, towns and villages, with a somewhat higher proportion of women candidates at the village level in some political parties.

The affirmative action provision did not specify what *position* must be given to women on the party lists. This was left to the discretion of each party. Women who were lower on the list were obviously less likely to actually take seats on the council. The highest overall concentrations of women candidates were in the bottom two positions on party lists, while only about 8% of all women candidates occupied the first position on a party list. However, looking at the party lists more broadly, the relative distribution of women was fairly even in the case of most political parties: 35% of all women candidates were in the top three positions on party lists, 28% in positions 4 and 5, and 38% at the bottom of the lists, in position 6 or lower down.

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[7] Most of the information in this section is drawn from Hubbard & Kavari (fn 4).

[8] Local Authorities Act, No. 23 of 1992, section 2.

[9] Local Authorities Act, section 6(3).

The local authority elections resulted in 114 women among the 362 councillors who took seats nationwide, meaning that women constitute 31,49% of the membership of local councils.

The affirmative action provision was probably not the only factor which influenced the greater participation of women in local elections. Interviews conducted shortly after the election revealed a widespread perception that regional councils are serious political bodies, while local authorities are involved with social and community issues rather than "politics". Women may also have had more self-confidence about asserting themselves at the local level.

Nevertheless, it is clear that some party lists were revised to include women solely because of the affirmative action provision. Thus, the statutory affirmative action provision successfully increased the level of female participation in local government.

The party list system and the affirmative action provision applied only to first elections for local authorities. In future, local authorities will be divided into wards, and voters from each ward will select one candidate to represent them. This means that in future local elections, the form of affirmative action applied in the 1992 elections will no longer be appropriate. It remains to be seen whether or not women will be able to maintain their high degree of representation without the aid of affirmative action in the next local government elections.

There is one other provision which is designed to help women enter local government. The definition of "political party" for the purpose of local elections includes any organisation or association which has registered as a political party with the support of at least 250 registered voters. This definition is broader than that for regional or national elections, where "political party" is limited to groups formed for the primary purpose of participating in and promoting elections.[10]

According to the Minister of Regional & Local Government and Housing, one of the purposes of this broad definition of "political party" is to make it possible for women's organisations to put forward candidates for local authority councils.[11] However, it should be noted that *no* group is allowed to register as a political party if it excludes or restricts membership on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status - meaning that organisations which are open *only* to women may not field candidates.[12]

In the first local elections, only two organisations other than political parties put forward candidates, neither of which were groups defined by their commitment to women's issues. However, it is still possible that a political party which identifies itself closely with women's issues may field candidates in the next local government elections.

7.4 WOMEN IN THE PUBLIC SERVICE

While the involvement of women in decision-making positions in government has improved greatly over pre-independence levels, women are still seriously under-represented in senior positions. For example, in

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[10] Electoral Act, sections 1, 39 and 42.

[11] In the parliamentary debate around the local and regional government bills, the Minister of Regional & Local Government and Housing stated:

> *"There are women associations who feel that they will be left out of these elections because there is no guarantee that some of the parties will include women. When I wanted to include a clause to give some percentage of each seat to women, I was shot down that it is discrimination. So, the women won't have a guarantee that they will be included. They want to stand as councillors through [the Namibian National Women's Organisation]. I think we will iron that out when we come to the Electoral Bill and see what can be done on that score."*

Debates of the National Assembly, 10 August 1992, p.229. See also Debates of the National Assembly, 21 August 1992, p.101.

[12] Electoral Act, sections 39(1)(a)(iii) and 42(1)(a).

1995 only three of the 21 positions of Minister (or their equivalent) were occupied by women, while women occupied only three out of 17 deputy ministerial positions.

Note: The following table includes personnel as classified by the Public Service Commission. The designations of positions may differ in some respects from the actual titles which are given to some government officials.

TABLE 1: Senior positions held by women and men in government

POSITION	TOTAL	WOMEN		MEN		TOTAL %	
		#	%	#	%	Women	Men
All senior positions	492	73	100,0	419	100,0	14,8	85,2
Members of National Assembly	76	12	16,4	64	15,3	15,8	84,2
Members of National Council	26	1	1,4	25	6,0	3,8	96,2
Ministers	21	3	4,1	18	4,3	14,3	85,7
Deputy Ministers	17	3	4,1	14	3,3		
Permanent Secretaries	25	3	4,1	22	5,3	12,0	88,0
Deputy Permanent Secretaries	20	1	1,4	19	4,5	5,0	95,0
Under-Secretaries	16	1	1,4	15	3,6		
Directors	93	17	23,3	76	18,1		
Deputy Directors	172	30	41,2	142	33,9		
Ambassadors	13	2	2,7	11	2,6	15,4	84,6
Regional Governors	13	0	0,0	13	3,1	0,0	100,0

Sources: CSO, *Women and Men in Namibia*, August 1995, p.111, Speaker's Office; Ministry of Foreign Affairs; Department of Public Service Management, Office of the Prime Minister - personal communication, November 1996.

When the distribution of public service employees is analysed by salary groupings, it is clear that women throughout the public service remain clustered in less influential positions which command lower incomes.

TABLE 2: Distribution of public service employees by salary grouping and sex

SALARY GROUPING (N$ per annum)	TOTAL	WOMEN		MEN		TOTAL %	
		#	%	#	%	Women	Men
All groups	26 419	10 644	100,0	15 775	100,0	40,3	59,7
73 455+ (management)	372	70	0,7	302	1,9	18,8	81,2
50 000 - 73 454	648	187	1,8	461	2,9	28,9	71,1
30 000 - 49 999	1 913	834	7,8	1 079	6,8	43,6	56,4
20 000 - 29 999	1 904	1 251	11,8	653	4,1	65,7	34,3
10 000 - 19 999	7 493	3 757	35,3	3 736	23,7	50,1	49,9
<10 000	14 089	4 545	42,7	9 544	60,5	32,3	67,7

CSO, *Women and Men in Namibia*, August 1995, p.32 (Source: Public Service Commission).

The under-representation of women stems in part from the legacy of colonial and traditional attitudes, which have combined to deny women the education and career opportunities available to men, as well as shaping society's perceptions about the role of women. The relatively low participation of women in influential government positions is also tied to their relatively low profile in political party structures.

While the Public Service Commission is conscious of the need to address the racial and gender balance of the public service, it does not have a formal policy on affirmative action for women and there are no official quotas or targets for the employment of women.[13] Furthermore, the DWA discovered in the process of preparing this report that, while gender-disaggregated statistics on salary levels within the public service were readily available, no government body had previously compiled statistics on the relative numbers of men and women in specific management positions such as Under-Secretary, Director and Deputy Director. However, once the affirmative action legislation proposed by the Ministry of Labour & Human Resources Development is in place, then the Government as an employer will be obliged to provide a periodic workforce analysis and to set specific goals for the recruitment and promotion of blacks, women and disabled persons.[14] Steps such as these will help Namibia to assess its progress in advancing women in the public service.

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[13] Information from the Public Service Commission, June 1995.

The few women who sit in high places at present have used their positions to highlight women's issues, but the lack of a greater number of influential women decision-makers has made it more difficult to keep gender-related matters in the spotlight.

This problem has been addressed by the DWA through the gender-sensitisation workshops already mentioned, which have attempted to make male and female policy-makers at different levels aware of the importance of gender. This effort will be complemented during 1996-97 by a series of leadership training and capacity-building workshops which the DWA is planning for women parliamentarians and women in senior positions in government and NGOs. The goal of this initiative is to increase the confidence and ability of women who are already in positions of leadership, thus enabling them to advance gender concerns more effectively.

7.5 WOMEN IN LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE

Women comprise only about 15% of the Namibian Police, and less than 8% of commissioned officers:

TABLE 3: Employees in the Namibian Police by rank and sex (1994)

RANK	TOTAL	WOMEN		MEN		TOTAL %	
		#	%	#	%	Women	Men
All ranks	2 310	344	14,89	1 966	85,11	14,9	0,9
Commissioned officers	193	15	4,4	178	9,1	7,8	0,9
Non-commissioned officers (total)	2 117	329	95,6	1 788	90,9	15,5	0,8

CSO, *Women and Men in Namibia*, August 1995, p.86 (Source: Namibian Police).

Note: Commissioned officers range from the rank of Inspector tc that of Inspector-General

The level of participation of women in the prison service is similar. However, these ratios may be influenced in part by the fact that about 96% of those incarcerated in Namibia's prisons are men.[15]

TABLE 4: Employees in the Prison Department by rank and sex (1994)

RANK	# WOMEN	# MEN	% WOMEN	% MEN
Total (officers and civilians)	46	351	11,6	88,4
Commissioned officers	1	2	16,7	83,3
Non-commissioned officers (total)	34	338	9,1	90,9
Civilian support staff	11	8	57,9	42,1

CSO, *Women and Men in Namibia*, August 1995, p.86 (Source: Department of Prison Services, Ministry of Home Affairs).

At the time of writing, the Namibian Defence Force was not keeping gender-disaggregated statistics on defence force members.

Women are completely absent from Namibia's judiciary; there is not a single female judge in the nation. However, 27% of Namibia's magistrates are women, which is a significant improvement over the representation of women in this post prior to independence. Women are well-represented among Namibia's state prosecutors, accounting for almost 47% of the total, as well as among state advocates, representing about 31% of the total.

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[14] See p. 67 for a summary of this proposed legislation.

[15] Information from Central Statistics Office (Department of Prison Services, Ministry of Home Affairs), as of 31 December 1993.

TABLE 5: Legal employees in the Ministry of Justice by position and sex (1994)

RANK	TOTAL	WOMEN		MEN		TOTAL %	
		#	%	#	%	Women	Men
All legal employees	141	45	100	96	100	32,0	68,0
Judges	7	0	0	7	7	0,0	100,0
Magistrates	48	13	29	35	36	27,1	72,9
Prosecutors	47	22	49	25	26	46,8	53,2
Advocates	13	4	9	9	9	30,8	69,2
Others	26	6	13	20	21	23,1	76,9

CSO, *Women and Men in Namibia*, August 1995, p.85 (Source: Ministry of Justice).

As of August 1995, there was one woman on the nine-member Law Reform & Development Commission, and one woman among the six members of the Law Faculty at the University of Namibia.[16]

The advancement of women into influential legal and judicial positions is hampered by their under-representation in the legal profession in Namibia, where they account for only about 15% of practising advocates and attorneys:

TABLE 6: Composition of legal institutions by sex

TYPE	TOTAL	WOMEN		MEN	
		#	%	#	%
Society of Advocates	16	2	12,5	14	87,5
Law Society	107	13	12,1	94	87,9
Law Reform and Development Commission	9	2	22,2	7	77,8
Law Faculty (UNAM)	6	1	16,7	5	83,3
Office of the Ombudsman	4	0	0,0	4	100,0
Board for Legal Education	6	1	16,7	5	83,3

CSO, *Women and Men in Namibia*, August 1995, p.85 (Sources: Law Society; Law Reform and Development Commission; UNAM Law Faculty; Office of the Ombudsman; Board for Legal Education).

7.6 WOMEN IN TRADITIONAL AUTHORITIES

The attitudes of traditional authorities towards issues relating to the family and to the economic activity of women are influenced by the fact that women are virtually absent from positions of traditional leadership. There are at least two Namibian communities where women hold the position of chief (the Sambyu and Bondelswarts communities). In addition, there are a few "headwomen" in some Kavango and Owambo communities.[17] However, other than these rare exceptions, traditional authorities and traditional courts are dominated by men.

While several traditional leaders have expressed their support for increasing the involvement of women, such commitments have not yet been realised in practice in most communities. There is also reportedly some resistance to the greater involvement of women from traditional leaders who occupy lower positions in traditional hierarchies. Women in some areas have complained that they are not even allowed to speak in traditional tribunals; although there do not seem to be any written rules against the participation of women in traditional courts in these areas, custom is a strong barrier in places where the courts have traditionally been the province of males.[18]

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[16] CSO, *Women and Men in Namibia*, August 1995, p.85.

[17] M.O. Hinz, *Customary Law in Namibia: Development and Perspective*, Centre for Applied Social Sciences (CASS), February 1995; H. Becker, "Gender aspects of traditional authorities and traditional courts in a democratic society: examples from northern Namibia" (mimeo), Windhoek, November 1995.

[18] Information from H. Becker, "Gender aspects of traditional authorities and traditional courts in a democratic society: examples from northern Namibia" (mimeo), Windhoek, November 1995; M.O. Hinz, *Customary Law in Namibia: Development and Perspective*, CASS, February 1995, p.133; M.O. Hinz, *Customary Law in Namibia: Development and Perspective - Documentation*, CASS, February 1995, pp. 199, 222; Namibia Development Trust,

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The DWA has attempted to alter attitudes about women in positions of traditional leadership through a series of gender-sensitisation workshops for community leaders in different regions throughout the country. The DWA has found that one obstacle which must be overcome in many areas is women's reluctance to speak in front of male traditional leaders. The gender-sensitisation workshops have helped to break the ice by providing a forum where the women could be encouraged to speak and the men encouraged to listen.

The newly-enacted Traditional Authorities Act includes a provision which requires that traditional authorities "promote affirmative action amongst the members of that community, in accordance with Article 23 of the Constitution, in particular by promoting women to positions of leadership."[19] Although the Act contains no specific monitoring or enforcement mechanisms, it should provide a basis for encouraging greater participation by women in traditional leadership positions.

Affirmative action for women has already been implemented in innovative ways by the Uukwambi community in northern Namibia. In May 1993, a meeting of Owambo traditional authorities resolved that women should be allowed to "participate fully" in the work of community courts. The Uukwambi traditional authority followed up on this resolution by incorporating it into the community's customary laws, and by taking steps to implement it in practical terms. The Uukwambi council of senior headmen directed all Uukwambi headmen to select a female representative in each ward who would act as a deputy to the headman and encourage female community members to take an active part in hearings of traditional courts and in other community meetings. Some of the headmen ignored this directive until it was reiterated in 1994, but in 1995 female representatives were in place in every ward. In addition, the chairman of the Uukwambi traditional council appointed a female deputy who sometimes presides over council meetings or hearings in the traditional court.

The Uukwambi initiative is a new one which is still encountering some obstacles. For example, some of the female representatives have expressed the view that they need more guidance from the traditional authorities to enable them to carry out their tasks adequately, and some community members - especially elder women - are having some trouble adapting to the notion of women as traditional leaders. However, the approach to affirmative action taken by the Uukwambi community should help women to gain experience in leadership responsibilities, and help community members get used to accepting women in responsible positions. The Uukwambi initiative may serve as a useful model for other communities in future.[20]

7.7 WOMEN AND THE MEDIA

According to statistics recently published by the United Nations, Namibia employs a high percentage of women in the media. In the print media, 46.6% of all employees are women, with 32% of senior management positions being held by women - figures that are on both counts among the highest in the world. In radio and television, 25% of all Namibia's employees are women, with only 11% of senior management positions being held by women.

Improving the Legal and Socio-Economic Situation of Women in Namibia: Uukwambi, Ombalantu and Uukwanyama Integrated Report, NDT, January 1994, pp.ES13-14; and discussion at a seminar on inheritance organised by the Law Reform & Development Commission, Ministry of Justice, Windhoek, February 1995.

[19] Traditional Authorities Act 17 of 1995, section 10(g).

[20] A preliminary assessment of the Kwambi community's approach to affirmative action is contained in H. Becker, "Gender aspects of traditional authorities and traditional courts in a democratic society: examples from northern Namibia" (mimeo), Windhoek, November 1995, p.11-ff.

TABLE 7: Women in broadcasting and the press (1993)

	% IN ALL POSITIONS	PRODUCTION	CREATIVE	TECHNICAL	ADMIN	SENIOR MANAGEMENT
Broadcast media	25	28	17	3	61	11
Print media	47	34	6	28	69	32

Source: United Nations, *The World's Women 1995: Trends and Statistics*, pp.169-170.

It is harder to determine the level of influence by women. While one major national newspaper in the country is edited by a woman,[21] in radio and television there are virtually no Namibian women in the top positions such as production executives, heads of departments and programme controllers.[22]

The Namibian Broadcasting Corporation (NBC), a government-funded parastatal, currently has four women on its 11-member board, down from four women out of a nine-member board appointed shortly after independence. No women hold top management positions at the NBC, and there are only five women among the approximately 40 middle-management level personnel.[23] The under-representation of women in this area is particularly disturbing given the NBC's parastatal position and its dominant position in the broadcast media.

However, despite the absence of women in decision-making positions, the coverage of gender-related issues in both the print and broadcast media has shown marked progress since independence - although there is still much room for improvement. For example, women's conferences and meetings and issues such as violence against women and maintenance have received prominent coverage in both print and broadcast media.

The DWA has recently worked through its sectoral committee on Women in Media to sponsor a workshop organised by the Namibia Media Women's Association and intended to empower media women with shared information and strategies. This workshop, which took place in October 1995, looked both at women employed in various positions and at the portrayal of women by the media. It also included presentations on legal and social issues which are particularly relevant to women, such as the laws on marriage and domestic abuse and the impact of AIDS in Namibia. The workshop participants agreed, among other things, to establish a monitoring mechanism to gather more detailed information on the portrayal of women by the media.

> *"Women's issues are sidelined by not getting appropriate coverage or when coverage is given, it is in the most negative form."*
>
> Deputy Foreign Affairs Minister Netumbo Ndaitwah,
> on opening a conference on women and the media (quoted in *The Namibian*, 27 October 1995).

It is possible that women will find more space for their voices to be heard in future through the efforts of NGOs. For example, a feminist magazine called *Sister* which is published by a small collective of women covers issues of relevance to women in simple language and has a national circulation of about 1 500. Post-independence legislation has also opened the door for private and community-based groups to apply for radio and television broadcast licences, although this avenue has not yet been utilised by women's organisations.

7.8 WOMEN IN THE PRIVATE SECTOR

Women are seriously under-represented in decision-making positions in the private sector, constituting only about 17% of employers nationwide.[24] In June 1995 a woman was elected as president of the male-dominated Namibia National Chamber of Commerce - reportedly becoming the first woman on the African continent to head a business chamber.[25] However, due to the marital powers accorded only to men, not a single Namibian women is registered as owning a large company or as being a share-holder in a large commercial concern.[26] Detailed information comparing the status and wages of men and women in the private sector is not available at present, but will be in future once the planned affirmative action legislation (described under Article 4 above) is implemented.

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[21] Gwen Lister is the editor of the daily newspaper, *The Namibian*.

[22] *The Namibian*, 19 May 1995.

[23] Information from NBC Public Relations Office, June 1995.

[24] 1991 *Population and Housing Census, Statistical Tables, Volume III*, p.1187.

The absence of women from key managerial and entrepreneurial positions in the private sector may have been influenced to some extent by the disabilities which many married women have experienced with respect to the right to own and dispose of property (as will be discussed in detail in connection with Article 15 of CEDAW). However, it also stems from more deeply-rooted stereotypes and perceptions.

The Government has taken several approaches to remedy this problem. The most far-reaching is the plan for affirmative action legislation which has already been described. In addition, women will be encouraged to acquire managerial experience by a new Co-operatives Bill which will soon be before Parliament. This bill requires that any co-operative with more than five women members, or with women constituting more than one-third of its members, must include at least one woman on its management and supervisory committees.

The DWA has focused on capacity-building. In the period from independence to 1993, the DWA sponsored 13 regional workshops on business management skills training, each involving 30 women. A follow-up set of workshops scheduled for 1995-96 will focus on strengthening the capacity of women who have already had a successful start in establishing their own enterprises. Through the gender sectoral committee on economic affairs, the DWA has also facilitated the launch of the Namibian Women's Business Association which will encourage women not only to become involved in small business ventures, but also to move into larger enterprises.

In addition, the DWA has already provided funds to women for income-generating projects in various regions. This approach will continue in a more focused way in future. The DWA plans to provide continued funding for 10 selected business projects, with the progress of these enterprises to be monitored by the new Namibian Women's Business Association. The distribution of funds will be guided by UNIDO regional assessments undertaken under the auspices of the DWA, and the DWA plans to enlist the aid of various NGOs to provide training for women in the selected businesses.

Such government programmes are complemented by the activities of NGOs active in this sector. For example, the Private Sector Foundation provides loans to women for small business ventures, and a chapter of the international Federation of Business and Professional Woman has been active in Namibia for many years.

These initiatives should help women to become more active and more visible in the private sector. The position of women in this sphere will require further assessment in the coming years in order to gauge the success of the various steps aimed at increasing the involvement of women in entrepreneurial activity.

7.9 WOMEN IN TRADE UNIONS

The position of women in Namibia's trade unions is important for the development of government plans because the trade unions, along with Namibia's employer organisations, are the social partners who are regularly consulted on matters relating to labour law and policy. Because women and women's issues are not adequately represented in trade union structures as yet, it has been necessary for the government to solicit the input of women's organisations to ensure that gender issues are given adequate consideration.

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[25] *The Namibian*, 19 June 1995.

[26] DWA, *Namibia National Report to the 4th World Conference on Women*, November 1994, pp.43-44.

It was estimated in 1992 that approximately 30% of the 70 000 members of Namibia's largest trade union federation, the Namibian Union of Namibian Workers (NUNW), were women. Women are reportedly more difficult to organise because the time constraints posed by their family responsibilities interferes with their ability to attend union meetings. Also, the industries covered by three of the NUNW's constituent unions - the Metal and Allied Namibian Workers' Union, the Mineworkers' Union of Namibia and the Namibia Transport and Allied Union - are dominated by male employees.[27]

A woman holds the highest office in two of the seven unions affiliated to the NUNW - the Namibia Domestic and Allied Workers' Union and the Namibia Food and Allied Union. There are only four women among the approximately 30 members of the NUNW's highest decision-making body, the Executive Committee.[28] Women are similarly under-represented in executive positions in other trade unions which are not affiliated to the NUNW.

The NUNW has a Women's Desk with a full-time co-ordinator who is responsible for promoting gender-oriented activities. The aim of the Women's Desk is to assist individual unions to set up women's structures, to increase women's participation in union activities, and to monitor the status of women in the unions.

Namibia also participates with other women in the region in the "Annual Southern African Trade Union Women's Forum", which provides a platform for the discussion of gender strategies at an international level. National workshops are held each year in preparation for the forum, which is exploring ways to help women adapt to new political and economic environments.

While Namibia's trade unions have not been oblivious to the issues affecting women workers, such issues have not been accorded a consistently high priority. This is another sphere of life in which affirmative action for women may be needed.[29]

The activities of the Namibian National Teachers' Union (NANTU) provide a useful model for the empowerment of women through the trade unions. This union holds regular national, regional and branch workshops to empower its women members through the exchange of information on legal and social issues and through capacity-building and confidence-building exercises. These meetings also serve as a women's caucus in which women plan strategies for placing gender issues on the union's agenda and ensuring that women are elected to executive posts. NANTU has also established an independent women's advisory committee which makes recommendations to the union's executive committee on issues related to women in NANTU.

7.10 WOMEN IN THE CHURCHES

It is estimated that 90% of Namibia's population is Christian, and that about 70% of the population attends church regularly. The church is one of the most influential institutions in Namibian society, particularly in the rural areas.

Women have been completely absent from church leadership positions until recently, and their presence is still extremely limited. In 1994 there were a total of 20 ordained women in Namibia, 18 in Lutheran denominations and two in the Anglican Church.[30]

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[27] International Labour Organisation, *Namibian Women and Employment: Strategies and policies for the promotion of equal opportunity and treatment for women and men in employment in Namibia*, ILO, 1992.

[28] Information from NUNW Office, Windhoek, June 1995.

[29] See generally ILO (fn.27).

[30] *Ibid*, p.44.

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The under-representation of women amongst church leaders in Namibia may be one reason why Christian beliefs so often continue to take the form of conservative Christian doctrine which works against the interests of women. For example, biblical teachings are often cited in both personal and political settings to justify the subordination of women, particularly in the family context. Church groupings continue to speak out against political reforms affecting women, such as abortion prostitution, the liberalisation of Namibia's laws on abortion and education on AIDS and family planning.[31] The church in Namibia does not speak with one voice, however, and some church leaders have also come out in strong support of women's issues.

Deputy Speaker of the National Assembly and leading Namibian theologian Dr Zephania Kameeta made the following comments during the parliamentary debate on the proposed Married Persons Equality Act which would abolish the husband's legal position of "head of household":

There have been quotations in this House taken from the Bible against the abolition of marital power. The Bible is a collection of books written by different people in different times and life situations. It is not enough to read it, but it is also very important to know the context in which a particular text was written. We find two creation stories in the Book of Genesis. Men, when they quote from the Bible, ignore the first creation story for obvious reasons. This story indeed gives marital socio-political and economic power to both women and men:

"Then God said 'And now we will make human beings; they will be like us and resemble us. They will have power over the fish, the birds and all animals, domestic and wild, large and small.' So God created human beings, making them to be like himself. He created them male and female."

Paul's letter to the Ephesians, which was quoted by one honourable member to support his views on marital powers, is concerned first of all with God's plan to bring all creation together in unity with Christ as head and it is also an appeal to God's people to live out this divine vision of unity in humanity. In this context, the apostle calls upon wives and husbands in Chapter 5, verse 21: "Submit yourselves to one another because of your reverence for Christ."

There is also another creation story from the Namibian soil which some honourable members in this House probably know. When God opened the tree, the woman came out first. She was the first to see the rising of the sun, ate fruits from the fruit tree and drank the milk from the cow. She called the man out of the tree, showed him the beautiful world around them, offered him the fruits and the milk. She was indeed in command.

Let us all in this House and outside rejoice that at last this legislation is on the table. It will be a shining example for Namibia if we adopt this bill unanimously.

The DWA familiarised itself with the social needs and problems of church women through a number of regional consultations following independence. One outgrowth of this effort was the establishment of an organisation called Ecumenical Women of Namibia (EWON), which has brought together women from 74 different denominations. In September 1992, the DWA organised a national conference which drew over 200 participants from all over Namibia. This conference was also particularly noteworthy in respect of CEDAW, for it was here, on 24 September 1992, that the President of Namibia, His Excellency Sam Nujoma, signed CEDAW.

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[31] See, for example, "Spiritual matters: Christmas message from CCN", *The Namibian*, 17 December 1993.

The Ecumenical Women of Namibia took the following resolutions at the 1992 conference sponsored by the DWA:

UNEMPLOYMENT

1. Women need access to the Labour Code. Seminars should be conducted by the Ministry of Labour and [Human Resources] Development.
2. Women should be accorded training in agricultural production and marketing skills.
3. The trade unions should take women's issues in labour disputes seriously.
4. The church should enable women's accessibility to high decision-making positions.

DIVORCE

1. The marriage officers (pastors) should explain the difference between marrying in community of property and marrying outside community of property, and give women the choice.

CHILD ABUSE

1. Community committees should be established in all neighbourhoods to monitor child abuse.

DEPARTMENT OF WOMEN AFFAIRS

1. The DWA should introduce CEDAW nationwide.
2. Regional Ecumenical Women Committees should be formed to strengthen the relationship between government and churches.
3. The Ecumenical Women of Namibia should conduct follow-up workshops in the regions to address the social problems in the community.
4. Church women must organise meetings in the communities to address crimes and to combat alcoholism.

VIOLENCE AGAINST WOMEN

1. Rape cases should be held *in camera* and victim's names should not be published in newspapers.
2. Rape sentences should be more severe.
3. Shelters should be provided for women and children who have been violated.
4. Women should learn self-defence.

DWA, Report on Ecumenical Women's Conference, 24-27 September 1992, Windhoek.

7.11 WOMEN IN NON-GOVERNMENTAL ORGANISATIONS AND COMMUNITY-BASED GROUPS

Many of Namibia's NGOs are sensitive to the importance of encouraging participation by women in management and leadership structures, and some have adopted specific affirmative action provisions to ensure the presence of women in their governing bodies.

However, despite these efforts, NGO work in general is still male-dominated. It has been suggested that the travel requirements placed on field staff, as well as the frequently-encountered requirement that NGO staff members must hold drivers' licences, may be among the factors operating to exclude women's participation, as well as an emphasis on formal educational qualifications rather than qualification by virtue of relevant experience.[32]

On the other hand, there are a number of national organisations which have been formed around women's issues, such as political wings of various political parties Namibia National Women's Organisation and the Young Women Christian Association. Other smaller women's groups are active in focusing on particular issues, such as Women's Solidarity which addresses the problem of violence against women, and Sister Namibia which publishes a magazine devoted to presenting women's issues in a broadly accessible manner.

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[32] DWA (fn.26), pp.44-45.

Still other women's organisations concentrate on community-based activities, such as the Namibia Women's Association which is active in Windhoek and the southern parts of Namibia around income-generating activities and community-run pre-primary schools, and Concerned Women Against Violence Against Women, an organisation which concentrates on community issues and has relatively autonomous local groups in eight locations. In general, there seems to be a slowly-increasing trend towards the grassroots organisation of women, around issues such as violence against women and drug and alcohol abuse.

Increased activity by national women's organisations and small community-based groups which are dominated by women, should help women to gain increased organisational skills and self-confidence about their leadership capacity - thus providing a springboard for the participation of women in wider fora.

It is also noteworthy that a range of NGOs joined forces to prepare for the 4th World Conference on Women in Beijing. Although this group initially experienced some difficulties in working together, these problems gradually gave way to a more mature spirit of co-operation. The NGO Preparatory Committee for Beijing hopes to reconstitute itself as an ongoing Women's Coalition which can help to implement the Global PlaTform of Action which emerged from Beijing.

Implementation of this platform, as well as implementation of CEDAW, will be a function of joint activities and complementary initiatives by government and NGOs co-ordinated through the mechanism of the gender sectoral committees established by the Department of Women Affairs as described in Part I.

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ARTICLE 8

International Representation

8.1 REPRESENTATION IN FOREIGN MISSIONS

Women have *de jure* equal access to diplomatic and international posts with men, but not *de facto* equality. There are at present 17 foreign missions, of which only two are headed by women. This means that just 11,76% of the total heads of foreign missions are women. However, as the following table shows, women are more well-represented in other posts at foreign missions.

TABLE 1: Representation in diplomatic service by sex

FOREIGN MISSIONS	WOMEN	MEN	% WOMEN
Heads of Mission	2	15	11,76
Minister-Counsellors/Under-Secretaries	2	5	28,57
Counsellors/Directors	2	5	28,57
First Secretaries/Foreign Service Officials	7	20	25,92
Second Secretaries/Administrative Assistants	11	6	64,70
Third Secretaries	14	0	100,0
TOTAL	38	51	42,70

Ministry of Foreign Affairs (9 January 1996).

There is generally speaking no possibility of joint postings for spouses in the diplomatic service, but where spouses have already been employed in the Ministry of Foreign Affairs, they have been posted jointly.

Since independence the ministry has had an opportunity to recommend only one person for inclusion in the United Nations system, and this person is a woman. A list of women who are suitably qualified to be nominated for appropriate positions in the UN system was drafted in June 1995.

Although the ministry has not introduced a special gender programme, there is a growing awareness in the ministry of the importance of promoting the advancement of women.[1] Intensive leadership training being conducted by the gender sectoral committee on Women and Decision-Making will help to increase the pool of women who are well-qualified for international positions

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[1] Refer also to the chapters on Articles 4 and 7 of CEDAW, dealing respectively with affirmative action and women in political and public life.

8.2 INTERNATIONAL DELEGATIONS

There are no special measures to ensure gender equality as regards representation on an international level, and the number of women participating in delegations to international meetings and conferences depends most often on whether or not they are in the field of expertise required at such a gathering

The DWA was unable to obtain information on the gender composition of international delegations selected by various ministries to represent Namibia at fora such as the recent Rio conference on the environment, the Cairo conference on population and development or the regular meetings of UN bodies such as the International Labour Organisation or OAU meetings. This indicates that there is a need for more conscious attention to the gender balance of such delegations

ARTICLE 9

Nationality

9.1 ACQUISITION AND LOSS OF NAMIBIAN CITIZENSHIP

Namibia's rules on nationality are completely gender-neutral. Citizenship is covered by the Constitution, which provides for six routes to citizenship:

- *Citizenship by birth:* A person who is born in Namibia to a Namibian mother or father, or to a mother or father who is ordinarily resident in Namibia at the time of the child's birth, is a Namibian citizen by birth.
- *Citizenship by descent:* A person who does not qualify for Namibian citizenship by birth, but was born to a mother or father who is a Namibian citizen, is a citizen by descent.
- *Citizenship by marriage:* A woman or a man may apply to become a Namibian citizen by marriage if he or she resides in Namibia as the spouse of a Namibian citizen for at least two years. Customary marriage may be recognised by the Minister of Home Affairs as a marriage for citizenship purposes if the minister is satisfied that the customary marriage does in fact exist.[1] This safeguard is necessary since Namibia has no requirement that customary marriages be registered. This route to citizenship applies to both civil marriage and customary marriage.
- *Citizenship by naturalisation:* Persons who have been ordinarily resident in Namibia for at least five continuous years may apply for citizenship by naturalisation.
- *Citizenship by registration:* This form of citizenship applied only during the first year following independence. Persons who had been continuously resident in Namibia for at least five years prior to independence could apply for citizenship by registration during the year following independence.
- *Honorary citizenship:* This form of citizenship can be conferred on "any fit and proper person by virtue of any special skill or experience or commitment to or services rendered to the Namibian nation either before or at any time after the date of independence."[2]

The Constitutional and statutory rules on citizenship include special provisions to extend their applicability to persons born before the date of independence, or persons who were resident in Namibia prior to the date of independence. There are also provisions designed to ensure that no person is rendered stateless by the application of Namibia's rules - although it is possible under the terms of the Namibian Citizenship Act for a Namibian citizen by registration or naturalisation to be rendered stateless if the Minister of Home Affairs is satisfied that it is not conducive to the public interest for the person in question to continue to enjoy Namibian citizenship.[3]

It is not possible for Namibians by birth or descent to be deprived of their citizenship on any grounds. However, persons who have acquired citizenship by registration or naturalisation may lose it if they:

- voluntarily become citizens of another country;
- serve in the armed forces of a foreign country which is at war with Namibia, or serve in the armed forces of any foreign country without the permission of the Namibian Government;

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[1] Namibian Citizenship Act 14 of 1990, section 3(3)

[2] Namibian Constitution, Article 4

[3] Namibian Citizenship Act 14 of 1990, section 9(4)

- take up permanent residence in another country and remain outside Namibia for more than two years, without the written consent of the Namibian Government.
- while outside Namibia, act in a manner which is "disloyal or disaffected towards Namibia," or in a manner "prejudicial or likely to be prejudicial to the public safety or order".
- trade unlawfully with an enemy of Namibia during a war, or
- are sentenced in a foreign country to a period of imprisonment of at least 12 months without the option of a fine

It is also possible for a person who acquired citizenship by registration or naturalisation to be deprived of such citizenship if there was fraud or false representation involved or if the person in question was a prohibited immigrant before he or she applied for citizenship

It is possible to renounce Namibian citizenship by voluntarily signing a formal declaration to that effect

A provision of the Namibian Citizenship Act which may have special relevance for women in some circumstances states that the acquisition of citizenship of a foreign country by marriage will not be grounds for the loss of Namibian citizenship if the foreign citizenship is renounced within one year of the marriage[4]

Although the application of these laws on citizenship does not always run smoothly, the Department of Women Affairs is not aware of any complaints which indicate a pattern of discrimination against women

9.2 ILLEGAL ALIENS IN NAMIBIA

In 1995 two problems have emerged with respect to the administration of Namibia's laws on illegal aliens The Constitution provides explicit protections for the rights of illegal immigrants Persons who have been arrested and held in custody as illegal immigrants have the right to consult confidentially with the legal practitioners of their choice (subject to such restrictions as are imposed in accordance with law and are necessary in a democratic society in the interests of national security or public safety) The Constitution also provides that no illegal immigrant may be deported from Namibia unless the deportation is authorised by a tribunal empowered by law to authorise deportation[5]

A series of court cases in 1995 brought to light two problems in respect of illegal aliens (1) Some illegal aliens were being detained for long periods of time without being brought before a tribunal, and (2) some illegal aliens continued to be detained after deportation was ordered due to the question of who was to provide the funds for the deportation. All of the persons discovered to be detained in such circumstances have been male, although at least one woman who was not held in custody has experienced a problem with timely deportation

The government acted to secure the prompt release of the illegal immigrants concerned in the court cases on this topic and will investigate measures to ensure better administration of the laws on immigration in future

9.3 REFUGEES IN NAMIBIA

Persons who would like to apply for refugee status in Namibia must register with both the Ministry of Home Affairs and the United Nations High Commission for Refugees (UNHCR) An interministerial Sub-committee on Refugee Status meets about every three months to hold interviews, to make decisions on applications and to hear appeals. This sub-committee includes a representative of the UNHCR who serves in an advisory capacity.

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[4] Namibian Citizenship Act 14 of 1990, section 77(1)(b)

[5] Namibian Constitution, Article 11(4)-(5)

At present, Angolans - who comprise the majority of refugee applicants - are automatically accorded refugee status, and relatively few applicants of any nationality have been rejected in recent years. In 1993, 863 out of 873 applicants were accepted for residence in Namibia, and 532 out of 587 applicants were accepted in 1994. (Gender-disaggregated statistics are not available at this time.) Persons whose applications are rejected have an opportunity to appeal.

Refugees are accommodated in Osire Refugee Camp, which is located about 225 kilometres north-east of Windhoek. In February 1995, the population at this camp was 1 009 (557 males and 452 females), including 450 children under the age of 18 (243 males and 207 females).

Refugees may move freely in and out of Osire, and those who have found opportunities for work or study elsewhere are free to relocate. The tent accommodation at the camp is gradually being replaced by brick houses constructed by the refugee population. The Council of Churches in Namibia (CCN) provides food and toiletries on a monthly basis, and the Ministry of Health & Social Services staffs a clinic which provides health care and family planning services. The health and crime situation at Osire is estimated to be similar to that found in other Namibian communities.

The CCN operates a kindergarten which had four teachers and 99 children (57 girls and 42 boys) in February 1995, and a primary school which had 12 teachers and 358 learners (153 girls and 205 boys) in February 1995. Pupils who have completed their primary education are able to move on to Namibian secondary schools.

Namibia is a party to the standard OAU and UNHCR conventions and protocols on refugees.

As in the case of citizenship and illegal immigration, no gender-related problems with the refugee camp or the application process have been observed.[9]

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[9] Information based on interviews with CCN, UNHCR and refugees resident at Osire, February 1995.

ARTICLE 10

Education

10.1 CONSTITUTIONAL PROVISIONS

The Namibian Constitution deals with education in Article 20, which states the following:

> *(1) All persons shall have the right to education.*
>
> *(2) Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge.*
>
> *(3) Children shall not be allowed to leave school until they have completed their primary education or have attained the age of sixteen (16) years, whichever is the sooner, save in so far as this may be authorised by Act of Parliament on grounds of health or other considerations pertaining to the public interest.*
>
> *(4) All persons shall have the right, at their own expense, to establish and to maintain private schools, or colleges or other institutions of tertiary education.*

10.2 BASIC EDUCATION

Namibia now spends 10% of its GNP on education. Looking at the overall budget (excluding subsidies to the University of Namibia, private schools and hostels; scholarships and aid to students in foreign countries; and subsidies to cultural organisations), the average 1994 allocation per pupil was N$1 772. However, as Table 1 indicates, this average masks sharp variations between educational regions. The Government acknowledges these gaps in expenditure to be alarming and urgent steps are being taken to address these inequities.[1]

TABLE 1: Allocation per school learner by education region

REGION	1994/95 (N$)	1993/94 (N$)
Katima Mulilo	1 348	1 480
Rundu	1 102	1 138
Ondangwa East	808	824
Ondangwa West	925	-
Khorixas	2 540	2 165
Windhoek	2 420	2 289
Keetmanshoop	2 376	2 345

Ministry of Education & Culture, Annual Report (1994), p.8.

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[1] Ministry of Education & Culture, *Annual Report* (for the year ending December 1994), presented to the National Assembly of the Republic of Namibia, p.70. The Ministry of Education & Culture was split into two separate ministries after the general elections in November 1994, namely: the Ministry of Basic Education & Culture and the Ministry of Higher Education, Vocational Training, Science & Technology. The main resource for this chapter was the Annual Report for 1994 of the former combined ministry.

The number of pupils in government schools has increased drastically since independence, accompanied by an increase in the number of schools and teachers. For example, enrolment in the formal education programme grew from 372 572 in 1989 to 450 639 in 1993, an increase of almost 21% (see Table 2). This rapid growth has obviously placed a strain on the Government's ability to provide effective educational services.

TABLE 2: Number of learners by grade and year (1989 to 1993) with percentage of females

GRADE	1989		1990		1991		1992		1993	
	Total	% F	Total	% F	Total	% F	Total	% F	Total	% F
Pre-primary	5 099	51,0	5 649	52,9	5 780	49,7	5 482	49,5	4 900	50,5
Grade 1	69 009	50,0	75 056	49,8	88 693	48,6	86 226	48,5	80 442	48,1
Grade 2	49 939	49,0	50 157	49,4	56 773	48,8	61 799	49,2	63 933	48,9
Grade 3	44 407	59,0	44 040	50,2	46 503	49,6	49 444	49,5	53 690	50,0
Grade 4	44 580	52,0	43 533	51,9	44 091	50,8	44 309	50,5	47 481	50,4
Grade 5	37 882	54,0	38 038	54,3	39 608	52,6	39 380	51,6	39 954	51,8
Grade 6	35 758	56,0	34 903	56,5	36 383	55,3	34 335	53,5	33 725	52,6
Grade 7	25 832	56,8	27 801	57,4	28 933	55,6	32 918	55,1	32 875	53,6
Grade 8	21 359	57,3	21 621	57,1	24 373	55,8	25 454	55,0	28 345	54,8
Grade 9	16 819	57,0	17 867	58,1	22 129	58,1	23 567	57,6	21 820	55,3
Grade 10	12 803	57,5	14 510	56,2	15 696	56,4	22 113	56,3	22 717	57,25
Grade 11	4 502	48,3	4 438	48,6	6 421	49,4	7 279	53,4	12 415	53,4
Grade 12	3 249	50,9	3 305	46,9	3 875	47,0	5 406	46,9	6 805	51,1
Other grades	1 334	30,6	1 527	33,2	1 722	26,8	1 613	31,4	1 537	32,3
TOTAL	372 572	52,7	382 445	52,6	420 980	51,5	439 325	51,3	450 639	51,1

Ministry of Education & Culture, *Annual Report (1994)*, p.5.

Since independence, the Government has greatly increased its capacity for collecting and analysing gender-disaggregated data, making it possible to compare the relative positions of boys and girls in respect of a number of fundamental indicators of educational development.

No marked gender stratification is apparent in pre-primary and special education,[2] as the lack of adequate pre-school and special educational facilities impacts on both males and females here (see Table 5).

Nationally, there are no striking gender distinctions in school enrolment. Looking at Grades 1-12, overall female enrolment shows a small rise between the primary and secondary grades. For example, overall female enrolment in 1994 was 49,0% in the lower primary grades as compared to 55,6% in senior secondary schools. However, these national totals conceal some important regional distinctions.

As Table 3 indicates, at the primary level (excluding special schools), regional female enrolment in 1994 ranged from 48,7% to 51,1%. At the secondary level, the regional variations are more pronounced. For example, in the educational region of Rundu, fewer than 40% of secondary school pupils are female. Furthermore, as Table 4 shows, although there is a nationwide female majority (52,8%) in the total enrolment for Grade 12, the educational regions of Katima Mulilo, Rundu, Windhoek, Keetmanshoop and Head Office (the latter referring to schools for special education) all have a minority of females at this level (39,3%; 27,4%; 48,3%; 47,5% and 26,1% respectively).

Overall, more girls than boys are promoted every year (62,7% as compared to 57,7%), but there is a lower promotion rate for girls in the higher grades (see Table 7). The difference in promotion rates in the higher grades is substantial in many educational regions. For instance, in Rundu, the Grade 10-11 promotion rate for boys is 83,6% while for girls it is 65,7%, and in Khorixas for the same grade 97,7% of boys are promoted as compared to 82,2% of girls.

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[2] The term "special education" refers to educational programmes for children with physical or other disabilities. The Directorate of Special Education Programmes in the Ministry of Basic Education & Culture is responsible for these programmes. (See below for further details.)

The regional figures give rise to the question of why promotion rates differ so dramatically between regions - gender aside. Regional differences in promotion rates may be accounted for to some extent by the regional disparities in the allocation of resources. However, a recent study found that differences in promotion rates do not necessarily reflect actual student performance, but may be a product of the ability of individual teachers to calculate marks, to assess what they teach, and to interpret ministry directives and policies.[3]

Children who are not promoted have two options: to repeat or to drop out. Thus, high repetition rates predictably occur in the grades where promotion rates are lowest, namely Grades 1 and 10. The repetition rates for girls are lower than those for boys in these grades.

Girls repeating Grade 10 total 35,7%, as compared to 23% of boys. This pattern holds true across all educational regions, although it is more marked in some regions than in others. For example, in the educational region of Katima Mulilo, the repetition rate for boys is 37,7% whereas for girls it is 50%. In the educational region of Rundu, the repetition rate for boys in Grade 10 is 7,8% compared to 12,9% for girls. Likewise, in Ondangwa East the repetition rate for boys in Grade 10 is 28,7%, compared to 41,6% for girls and in Ondangwa West 31,3% for boys and 45,1% for girls. (See Table 8.) Drop-out rates are highest in Grade 10.

More research needs to be conducted to determine the reasons for girls having lower promotion rates and higher repetition rates than boys once they reach the higher grades.

Tables 3 to 8 on the following pages provide statistics on the changes in the overall numbers of learners from 1990 to 1994; enrolments by educational region, grade and sex of new entrants, repeaters and re-entrants; and promotion and repetition rates for 1993-1994 by grade and sex.

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[3] Social Sciences Division (UNAM), Legal Assistance Centre & UNICEF, *Children in Namibia: Reaching Towards the Rights of Every Child*, Windhoek, 1995, p 120.

TABLE 3: Changes in numbers of learners by school phase and education region (1990 to 1994)

REGION	PHASE	YEAR										Average Annual Growth Rate
		1990		1991		1992		1993		1994		
		Total	% F	Total	% F	Total	% F	Total	% F	Total	% F	
Katima Mulilo	Primary	21 453	48,7	22 310	48,3	22 715	48,6	22 525	48,7	23 068	48,7	1,8%
	Secondary	6 644	44,6	7 744	45,6	8 978	45,6	9 842	45,8	10 767	47,2	12,8%
	Other	228	53,1	172	51,7	115	51,3	126	55,6	61	59,0	-28,1%
	Total	**28 325**	**47,7**	**30 226**	**47,6**	**31 808**	**47,8**	**32 493**	**47,8**	**33 896**	**48,3**	**4,6%**
Keetmanshoop	Primary	23 637	50,2	23 103	50,1	23 800	49,8	23 786	49,6	24 142	49,5	0,5%
	Secondary	7 100	52,2	7 533	50,2	7 488	51,4	7 493	51,9	8 131	51,9	3,4%
	Other	1 115	49,1	1 258	47,9	1 180	48,1	985	46,5	997	44,9	-2,8%
	Total	**31 852**	**50,6**	**31 894**	**50,1**	**32 468**	**50,1**	**32 264**	**50,0**	**33 270**	**49,9**	**1,1%**
Khorixas	Primary	20 357	51,0	20 988	51,1	20 961	50,4	21 132	50,0	24 718	50,3	5,0%
	Secondary	4 911	51,0	5 314	52,2	5 796	52,6	6 626	52,6	9 372	52,2	17,5%
	Other	543	50,3	566	48,1	423	45,9	438	47,7	603	45,4	2,7%
	Total	**25 811**	**51,0**	**26 868**	**51,2**	**27 180**	**50,8**	**28 196**	**50,6**	**34 693**	**50,7**	**7,7%**
Ondangwa East	Primary	73 370	55,4	87 812	52,5	91 906	51,9	92 715	51,6	96 999	51,[illegible]	7,2%
	Secondary	8 188	64,2	11 906	62,8	14 985	61,2	16 705	60,2	18 718	59,7	23,0%
	Other	160	48,1	135	49,6	115	44,3	111	42,3	169	43,2	1,4%
	Total	**81 718**	**56,2**	**99 853**	**52,8**	**107 006**	**53,2**	**109 531**	**52,9**	**115 886**	**52,5**	**9,1%**
Ondangwa West	Primary	97 720	52,1	106 834	50,5	106 178	50,1	105 699	49,8	107 382	49,4	2,4%
	Secondary	17 218	66,5	20 886	64,3	25 904	62,4	29 058	61,2	30 438	60,1	15,3%
	Other	398	36,2	381	16,0	270	28,9	191	19,9	42	54,8	-43,0%
	Total	**115 336**	**54,2**	**128 101**	**52,6**	**132 352**	**52,5**	**134 948**	**52,2**	**137 862**	**51,8**	**4,6%**
Rundu	Primary	28 396	50,5	29 361	49,8	30 845	49,7	32 939	49,6	35 220	49,5	5,5%
	Secondary	2 712	35,1	3 456	37,4	4 106	37,8	4 667	37,3	5 270	37,5	18,1%
	Other	1 620	56,9	1 405	47,6	1 391	48,7	1 208	51,6	807	53,4	-16,0%
	Total	**32 728**	**49,5**	**34 222**	**48,5**	**36 342**	**48,3**	**38 814**	**48,2**	**41 297**	**48,1**	**6,0%**
Windhoek	Primary	48 595	50,6	50 576	50,5	52 006	50,4	53 304	50,1	55 137	50,1	3,2%
	Secondary	14 968	51,7	15 655	51,2	16 562	51,8	17 711	52,1	19 076	51,8	6,3%
	Other	3 112	45,5	3 585	43,9	3 601	44,2	3 378	45,2	3 226	47,9	0,9%
	Total	**66 675**	**50,6**	**69 816**	**50,4**	**72 169**	**50,4**	**74 393**	**50,3**	**77 439**	**50,4**	**3,8%**
Total	**Primary**	**313 528**	**52,0**	**340 984**	**50,8**	**348 411**	**50,5**	**352 100**	**50,2**	**366 666**	**50,0**	**4,0%**
	Secondary	**61 741**	**56,0**	**72 494**	**55,6**	**83 819**	**55,4**	**92 102**	**55,0**	**101 772**	**54,5**	**13,3%**
	Other	**7 176**	**48,7**	**7 502**	**44,5**	**7 095**	**45,4**	**6 437**	**46,2**	**5 905**	**47,9**	**-4,8%**
	Total	**382 445**	**52,6**	**420 980**	**51,5**	**439 325**	**51,3**	**450 639**	**51,1**	**474 343**	**50,9**	**5,5%**

Ministry of Education & Culture , *Annual Report* (1994), p.128.

TABLE 4: Enrolments of male and female learners in Grades 1-12 (1994)

REGIONS	% M/F	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 9	Grade 10	Grade 11	Grade 12
Total	**Male**	**41 075**	**33 366**	**29 048**	**26 582**	**21 056**	**16 299**	**15 917**	**13 792**	**10 647**	**10 118**	**5 864**	**5 843**
	Female	**37 673**	**31 752**	**28 522**	**26 803**	**22 307**	**18 010**	**18 256**	**16 134**	**13 156**	**13 995**	**5 687**	**6 536**
	% Female	**47,8**	**48,8**	**49,5**	**50,2**	**51,4**	**52,5**	**53,4**	**53,9**	**55,3**	**58,0**	**49,2**	**52,8**
Katima Mulilo	Male	2 076	1 796	1 795	1 799	1 558	1 396	1 403	1 362	1 209	1 445	732	939
	Female	2 012	1 882	1 675	1 674	1 435	1 269	1 298	1 295	1 146	1 451	581	607
	% Female	49,2	51,2	48,3	48,2	47,9	47,6	48,1	48,7	48,7	50,1	44,2	39,3
Rundu	Male	4 864	3 352	2 814	2 299	1 775	1 316	1 350	1 280	687	473	460	393
	Female	4 671	3 371	2 885	2 366	1 726	1 209	1 222	957	426	243	203	148
	% Female	49,0	50,1	50,6	50,7	49,3	47,9	47,5	42,8	38,3	33,9	30,6	27,4
Ondangwa E.	Male	12 898	9 687	7 639	6 448	4 560	3 246	2 946	2 405	1 830	1 873	573	869
	Female	11 905	9 455	7 936	7 154	5 257	4 012	3 856	3 302	2 852	3 094	749	1 171
	% Female	48,0	49,4	51,0	52,6	53,5	55,3	56,7	57,9	60,9	62,3	56,7	57,4
Ondangwa W.	Male	12 104	10 246	8 657	8 241	6 018	4 546	4 408	3 572	2 834	3 063	1 242	1 409
	Female	10 461	8 961	8 311	7 990	6 474	5 204	5 588	4 705	4 033	5 599	1 476	2 457
	% Female	46,4	46,7	49,0	49,2	51,8	53,4	55,9	56,8	58,7	64,6	54,3	63,6
Khorixas	Male	2 101	1 893	1 901	1 829	1 676	1 465	1 423	1 292	1 061	863	799	462
	Female	2 064	1 869	1 845	1 888	1 728	1 503	1 533	1 444	1 166	991	773	521
	% Female	49,6	49,7	49,3	50,8	50,8	50,6	51,9	52,8	52,4	53,5	49,2	53,0
Windhoek	Male	4 980	4 398	4 294	4 164	3 841	2 911	2 932	2 683	2 091	1 632	1 455	1 243
	Female	4 615	4 285	4 017	4 129	4 027	3 288	3 256	3 042	2 466	1 762	1 345	1 163
	% Female	48,1	49,3	48,3	49,8	51,2	53,0	52,6	53,1	54,1	51,9	48,0	48,3
Keetmans	Male	2 031	1 975	1 915	1 772	1 614	1 399	1 444	1 159	906	745	581	511
	Female	1 930	1 917	1 839	1 588	1 650	1 517	1 498	1 360	1 030	822	545	463
	% Female	48,7	49,3	49,0	47,3	50,6	52,0	50,9	54,0	53,2	52,5	48,4	47,5
Head Office	Male	21	19	33	30	14	20	11	39	29	24	22	17
	Female	15	12	14	14	10	8	5	29	37	33	15	6
	% Female	41,7	38,7	29,8	31,8	41,7	28,6	31,3	42,6	56,1	57,9	40,5	26,1

Ministry of Education & Culture, *Annual Report (1994)*, p.132

NOTE: "Head Office" refers to the administrators of schools for the handicapped and other learners requiring special conditions. These schools are administered centrally

TABLE 5: Enrolments of male and female learners in grades other than Grades 1-12

REGIONS	% M/F	Primary	Pre-Bridging Year	Special Classes	Year Level 1	Year Level 2	Year Level 3	Year Level 4	Year Level 5	Etc.	N1	N2	N3	Handi-capped	Grade 13
Total	**Male**	**1 592**	**701**	**370**	**25**	**59**	**56**	**45**	**65**	**31**	**25**	**13**	**14**	**64**	**36**
	Female	**1 605**	**701**	**209**	**26**	**37**	**48**	**32**	**31**	**0**	**21**	**11**	**21**	**57**	**30**
	% Female	**50,2**	**50,0**	**36,1**	**51,0**	**38,5**	**46,2**	**41,6**	**32,3**	**0,0**	**45,7**	**45,8**	**60,0**	**47,1**	**45,5**
Katima Mulilo	Male	25	0	0	0	0	0	0	0	0	0	0	0	0	0
	Female	36	0	0	0	0	0	0	0	0	0	0	0	0	0
	% Female	59,0	-	-	-	-	-	-	-	-	-	-	-	-	-
Rundu	Male	356	22	0	0	0	0	0	0	0	0	0	0	0	0
	Female	409	22	0	0	0	0	0	0	0	0	0	0	0	0
	% Female	53,5	50,0	-	-	-	-	-	-	-	-	-	-	-	-
Ondangwa East	Male	39	40	5	0	0	0	0	0	0	0	0	0	0	0
	Female	30	40	3	0	0	0	0	0	0	0	0	0	0	0
	% Female	43,5	50,0	37,5	-	-	-	-	-	-	-	-	-	-	-
Ondangwa West	Male	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Female	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	% Female	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Khorixas	Male	258	12	46	0	0	0	0	0	0	12	5	0	0	0
	Female	244	12	18	0	0	0	0	0	0	0	0	0	0	0
	% Female	48,6	50,0	28,1	-	-	-	-	-	-	0,0	0,0	-	-	-
Windhoek	Male	562	551	206	0	0	0	0	0	0	0	8	14	0	36
	Female	563	551	116	0	0	0	0	0	0	0	5	18	0	30
	% Female	50,0	50,0	36,0	-	-	-	-	-	-	-	38,5	56,3	-	45,5
Keetmanshoop	Male	348	66	107	0	0	0	0	0	0	0	0	0	0	0
	Female	317	66	65	0	0	0	0	0	0	0	0	0	0	0
	% Female	47,7	50,0	37,8	-	-	-	-	-	-	-	-	-	-	-
Head Office	Male	4	10	6	25	59	56	45	65	31	13	0	0	64	0
	Female	6	10	7	26	37	48	32	31	0	21	6	3	57	0
	% Female	60,0	50,0	53,8	51,0	38,5	46,2	41,6	32,3	0,0	61,8	100,0	100,0	47,1	-

Ministry of Education & Culture, *Annual Report (1994)*, p.133.

TABLE 6: Numbers of new entrants, repeaters and re-entrants in Grades 1-12

GRADES	NEW ENTRANTS			REPEATERS			RE-ENTRANTS		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Namibia Total	362 294	175 597	186 697	99 741	50 786	48 955	6 404	3 226	3 178
Grade 1	50 974	25 746	25 228	25 797	14 226	11 571	1 977	1 103	874
Grade 2	48 766	24 293	24 473	15 408	8 520	6 888	944	553	391
Grade 3	46 050	22 775	23 275	10 876	5 906	4 970	644	367	277
Grade 4	41 511	20 141	21 370	11 380	6 139	5 241	494	302	192
Grade 5	34 133	16 302	17 831	8 875	4 567	4 308	356	188	168
Grade 6	28 995	13 704	15 291	5 040	2 461	2 579	274	134	140
Grade 7	27 369	12 889	14 480	6 454	2 874	3 580	350	155	195
Grade 8	23 902	11 200	12 702	5 682	2 468	3 214	342	124	218
Grade 9	20 158	9 251	10 907	3 294	1 307	1 987	351	89	262
Grade 10	17 207	7 875	9 332	6 433	2 094	4 339	473	149	324
Grade 11	11 346	5 788	5 558	61	29	32	144	47	97
Grade 12	11 883	5 633	6 250	441	195	246	55	15	40

Ministry of Education & Culture, *Annual Report (1994)*, p.134.

NOTE

- New entrants are those who have been promoted into a grade For Grade 1 they are learners enrolling in school for the first time.
- Repeaters are learners repeating the same grade
- Re-entrants are learners who have returned to school after having previously left

TABLE 7: Promotion rates of male and female learners in Grades 1-11 (1993→1994)

REGION		Grd 1→ Grd 2	Grd 2→ Grd 3	Grd 3→ Grd 4	Grd 4→ Grd 5	Grd 5→ Grd 6	Grd 6→ Grd 7	Grd 7→ Grd 8	Grd 8→ Grd 9	Grd 9→ Grd 10	Grd 10→ Grd 11	Grd 11→ Grd 12
Namibia Total	Total	**60,1**	**71,4**	**76,5**	**71,0**	**71,6**	**80,1**	**71,7**	**70,2**	**77,7**	**49,0**	**94,2**
	Male	**57,7**	**69,3**	**74,3**	**68,3**	**70,1**	**79,6**	**72,5**	**71,2**	**79,6**	**58,5**	**95,9**
	Female	**62,7**	**73,7**	**78,7**	**73,6**	**73,0**	**80,7**	**71,1**	**69,4**	**76,1**	**41,8**	**92,8**
Katima Mulilo	Total	72,9	81,9	80,3	77,5	78,9	82,1	79,9	74,2	81,3	46,5	100,3
	Male	70,1	83,1	79,3	76,7	79,6	81,5	79,4	77,5	81,0	50,2	100,1
	Female	75,7	80,7	81,4	78,3	78,1	82,7	80,5	70,9	81,6	42,4	100,7
Rundu	Total	53,3	73,0	73,4	70,3	69,9	79,7	59,5	42,8	59,9	77,1	94,9
	Male	52,6	73,1	72,9	72,4	73,9	82,2	65,3	47,2	64,9	83,6	95,1
	Female	54,0	72,9	73,9	68,2	65,9	77,0	52,7	36,9	51,5	65,7	94,2
Ondangwa East	Total	52,7	64,8	73,1	66,7	69,3	78,3	71,8	74,7	76,8	29,9	99,0
	Male	50,2	62,5	70,2	64,0	68,3	78,0	72,5	76,4	81,8	34,2	100,8
	Female	55,3	67,2	75,7	69,1	70,2	78,5	71,3	73,7	73,6	27,4	97,6
Ondangwa West	Total	55,2	65,1	72,9	64,8	67,3	76,7	69,9	72,1	79,6	32,[illegible]	92,5
	Male	52,8	61,8	70,2	60,0	63,0	75,0	70,1	72,4	80,6	42,7	94,9
	Female	57,9	68,9	75,6	69,7	70,4	78,2	69,7	71,9	78,9	26,5	91,1
Khorixas	Total	73,3	82,2	82,7	75,3	75,4	85,0	72,8	73,3	82,9	89,6	91,7
	Male	71,6	80,7	80,5	74,4	75,4	85,9	72,8	74,7	84,4	97,7	93,8
	Female	75,0	83,9	84,8	76,1	75,3	84,1	72,8	72,1	81,6	82,2	89,8
Windhoek	Total	80,4	85,6	84,1	79,2	73,8	82,9	76,3	70,7	77,0	79,4	92,7
	Male	77,2	84,0	81,6	76,4	70,9	80,7	77,5	72,5	79,9	84,2	94,1
	Female	83,9	87,4	86,7	81,8	76,6	85,0	75,2	69,2	74,5	74,7	91,3
Keetmanshoop	Total	80,4	84,5	84,4	85,0	79,7	85,4	69,1	67,7	75,3	73,3	90,7
	Male	77,5	81,3	82,2	82,3	77,2	86,1	67,7	69,0	76,5	76,9	91,7
	Female	83,4	87,8	86,9	87,7	82,1	84,6	70,4	66,6	74,2	69,8	89,5
Head Office	Total	51,3	80,8	88,4	42,9	50,0	64,0	192,3	73,6	108,7	40,9	82,1
	Male	45,8	87,9	83,3	32,0	44,8	57,9	170,6	56,3	95,0	36,2	85,0
	Female	60,0	68,4	100,0	70,0	61,5	83,3	233,3	94,9	119,2	50,0	75,0

Ministry of Education & Culture, *Annual Report (1994)*, p.136.

NOTE: Promotion rates are the percentages of learners in a grade in 1993 who were promoted into the next grade in 1994. Information for Walvis Bay is excluded because statistics for those schools are not available for 1993. Rates above 100% are due to migration or learners returning to school after having previously left.

TABLE 8: Repetition rates of male and female learners in Grades 1-12 (1993→1994)

REGION	TOTAL		Grade 1	Grade 2	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 9	Grade 10	Grade 11	Grade 12
Namibia Total	Total	23,8	34,4	25,5	21,4	24,9	23,0	15,7	20,4	21,1	16,5	30,3	1,4	7,2
	Male	24,8	36,6	27,7	23,3	27,2	24,5	16,2	19,6	20,0	14,1	23,0	1,1	6,3
	Female	22,8	32,1	23,2	19,5	22,6	21,5	15,2	21,1	22,0	18,5	35,7	1,7	8,2
Katima Mulilo	Total	21,0	22,5	17,8	18,8	19,6	18,5	15,4	18,4	22,0	20,5	43,6	0,7	27,1
	Male	20,8	24,9	18,3	19,6	20,9	19,2	16,6	20,1	20,6	17,2	37,7	0,5	23,3
	Female	21,4	20,2	17,3	17,9	18,3	17,8	14,2	16,5	23,5	24,3	50,0	1,1	33,0
Rundu	Total	26,4	34,8	24,5	24,1	24,1	21,1	16,0	26,8	39,6	25,9	9,7	0,4	1,3
	Male	25,6	35,4	25,2	23,7	23,8	19,3	14,5	23,8	36,6	22,9	7,8	0,5	0,6
	Female	27,3	34,1	23,8	24,6	24,3	23,0	17,5	30,2	43,8	31,0	12,9	0,0	3,4
Ondangwa East	Total	27,9	40,2	29,9	23,1	27,8	23,9	16,6	20,8	17,5	18,5	36,7	0,7	6,0
	Male	29,5	42,1	32,0	25,5	30,2	25,7	17,8	19,7	16,4	14,1	28,7	0,8	2,0
	Female	26,4	38,2	27,8	21,0	25,6	22,6	15,6	21,6	18,2	21,3	11,6	0,7	9,2
Ondangwa West	Total	28,2	41,8	31,0	25,0	31,2	26,6	19,5	22,3	19,3	16,1	40,3	2,6	4,7
	Male	30,3	44,7	34,1	27,5	35,1	29,1	20,6	21,6	18,0	13,8	31,3	1,9	3,2
	Female	26,3	38,6	27,7	22,3	27,2	24,2	18,6	22,8	20,3	17,7	45,1	3,1	5,8
Khorixas	Total	18,2	22,1	16,3	17,5	20,0	21,8	11,7	19,3	25,6	14,1	18,9	2,5	2,7
	Male	18,1	23,3	18,2	19,1	20,8	22,9	11,2	15,6	22,4	11,6	16,2	2,0	2,0
	Female	18,3	20,8	14,2	15,9	19,2	20,6	12,1	22,8	28,5	16,3	21,5	2,9	3,3
Windhoek	Total	15,2	16,8	14,5	15,3	18,1	21,7	12,3	18,2	18,9	12,9	6,2	0,6	1,4
	Male	16,1	18,7	16,4	17,5	20,0	23,6	12,6	18,5	17,8	10,7	4,6	0,7	1,0
	Female	14,4	14,8	12,4	13,0	16,2	19,9	12,1	17,9	19,9	14,8	7,7	0,5	1,6
Keetmanshoop	Total	14,5	19,0	14,8	14,4	13,4	16,9	10,3	15,6	19,3	13,7	13,2	0,3	0,5
	Male	15,4	20,9	17,6	16,5	15,4	18,9	10,5	14,5	17,8	13,6	11,3	0,4	0,0
	Female	13,6	17,1	11,8	12,0	11,5	15,0	10,1	16,5	20,6	13,8	15,0	0,2	1,0
Head Office	Total	14,0	28,2	21,2	11,6	17,1	21,4	28,0	0,0	20,7	4,3	8,0	3,6	0,0
	Male	16,0	33,3	24,2	13,3	20,0	20,7	36,8	0,0	20,8	10,0	8,6	5,0	0,0
	Female	10,5	20,0	15,8	7,7	10,0	23,1	0,0	0,0	20,5	0,0	6,7	0,0	0,0

Ministry of Education & Culture, *Annual Report (1994)*, p.135.

NOTE: Repetition rates are the percentages of learners in a grade in 1993 who were repeating the same grade in 1994. Information for Walvis Bay is excluded because statistics for thos schools are not available for 1993.

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10.3 SCHOOL DROP-OUT RATES AND TEENAGE PREGNANCY

Tables 9 and 10 indicate that there is a significant drop-out rate for girls once they reach puberty. Even in the Ondangwa region where girls are in the majority, there is a relative shortfall from Grade 10 onwards. The situation in the Rundu region is extremely serious where drop-out rate for girls from Grade 8 onwards is accelerating. In some districts in the Rundu region there are hardly any girls in senior secondary education.

TABLE 9: Primary school drop-out rates per 100 school population by grade and sex

GRADE	GIRLS	BOYS
1	9,1	9,7
2	4,3	6,3
3	2,2	4,1
4	4,6	6,2
5	6,9	4,9
6	6,5	4,9
7	9,9	8,1

CSO, *Women and Men in Namibia*, p.45 (Source: MEC Annual Education Census for 1993).

TABLE 10: Secondary school drop-out rate 100 school population by grade and sex

GRADE	GIRLS	BOYS
8	10,7	9,6
9	10,2	6,8
10	22,3	20,4
11	8,6	5,8

CSO, *Women and Men in Namibia*, p.46 (Source: MEC Annual Education Census for 1993).

Causes of drop-out

At a National Workshop on Marginalised Children in 1992 it was stated that children are often busy assisting their mothers with child-raising, subsistence farming and householding and that this explains the high failure rate and consequent drop-out in communal areas. In other words the problem is linked not only to inadequate resources and poorly-trained teachers, but also to irregular school attendance and physical and mental fatigue of children who are effectively workers and part-time students.[4] Community pressure to start a family and work is very strong, possibly due in part to a lack of food security.

Teenage pregnancy is a major contributing factor to the high female school drop-out rate.[5] The current practice of most schools is to expel a pregnant schoolgirl from the formal education system for a period of one to two years. Thereafter she might be allowed by the principal of a different school to continue her interrupted education. If not, however, she cannot invoke a formal right of re-admittance to school, but has to accept the refusal. She may instead join continuing education classes. On the other hand, boys, schoolboys or school teachers who impregnate female learners seldome face any cconsequences, although some schools do take action. In many cases, the pregnant schoolgirl will drop out without making her pregnancy known, or without naming the father of the child.[6]

A draft study on teenage pregnancy prepared for UNAM's Human Rights and Documentation Centre reports that the rationale behind such discriminatory practices is firstly that schools cannot provide facilities suitable for child care, and secondly a belief that pregnant learners exert a bad influence on the morality of other learners because their condition implies that sex before marriage is an acceptable practice.[7] While this emphasis on moral example appears to be misguided, it does reflect the views of many communities in Namibia.

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[4] MEC, *Report on the National Workshop on Marginalised Children in Namibia*. R. Pakleppa, "Conceptualisation, Manifestation and Dimensions of Educationally Marginalised Children as well as Contributory Factors", 1992, p.2 and Annexure IV.

[5] See, for example, UNICEF/NISER, *Situation Analysis of Children and Women in Namibia*, Windhoek, 1991, p.95.

[6] C. Dieden, *Draft Study on Teenage Pregnancy* (unpublished), Human Rights and Documentation Centre (UNAM), 1994; H. Becker *et al*, *Teenage Pregnancy and the Right to Education*, Windhoek, November 1995, p.12-13.

In September 1994, the Ministry of Basic Education & Culture established a task force to address the problem of teenage pregnancy in Namibian schools. This task force is currently composed of representatives from the Ministry of Basic Education & Culture, UNICEF, UNFPA and NANSO.

The ministry has recently produced a draft Policy on Pregnancy Among Learners at Schools. The document incorporates changes agreed to during consultation with interested parties in September 1995 and further changes made on the advice of the Attorney-General. It will serve as a basis for discussion at regional workshops on the topic. The document establishes a code of conduct for male teachers who engage in sex with schoolgirls, stipulating that such conduct is strictly prohibited and constitutes a serious offence on the part of the teacher. Sexual harassment or coercion will equally be regarded as serious offences. A teacher who contravenes these rules will be advised to resign and failing that will be charged with misconduct and relieved of his or her duties pending the outcome of disciplinary proceedings. Disciplinary steps will be instituted which may lead to the dismissal of a teacher; in all cases involving sexual relations between teachers and learners the dismissal of the teacher shall be sought. In addition, no teacher dismissed for sexual misconduct shall be employed at another school; a principal who is aware of such a breach is obliged to institute disciplinary action, and a member of staff aware of such a breach is obliged to report the matter to the principal. There is a further obligation to notify the Namibian Police should the conduct constitute a criminal offence, such as engaging in sexual intercourse with a girl who is under the age of 16 years.

The document states that schools must confront the situation of pregnancies among learners by rendering support rather than punishing the pregnant learner. The document recommends that the following measures be taken:

- There should be at least one member of staff with whom the girl can discuss her situation.
- The girl should be encouraged to reveal the identity of the responsible male.
- The girl may continue with her education at the school until the time of her confinement. After birth, and provided that there is clear evidence that the infant will be cared for by a responsible adult, the girl will have the right of readmission to the same school within 12 months of her confinement. She will also have the option to return to another school, provided that there is space. Should the girl decide not to return to full-time schooling, she should be counselled about the options available to her for continuing her education.
- A girl who has left school due to pregnancy may write her end of year examinations provided that she can satisfy the school board that her work is up to standard. She may write her examinations along with other learners unless the school board decides to make other arrangements. However, if the girl is reluctant to write in the same room as the other learners, she will have to carry the costs of making alternative arrangements.
- If the male responsible for the pregnancy is a schoolboy, he will receive counselling on his responsibility to provide maintenance for the child.

The document states that these provisions are not intended as a form of punishment, recognising that by becoming pregnant a girl has taken on other responsibilities which must be given due recognition.

While this proposed policy is a great improvement on the existing approach, it will still need fine-tuning. For example, the policy document is notably silent about the parental responsibilities of schoolboys or school teachers who impregnate female learners, aside from the payment of maintenance. The planned

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[7] C. Dieden, (fn 6), pp 2-3

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public discussions around this topic should provide a useful opportunity for exploring the dynamics of the problem more thoroughly.

> "*'Education for all' does not mean only education for non-teenage mothers.*" (hostel superintendant, Rundu area)
>
> "*The school does not feel it is right to have pregnant girls among other learners.*" (principal, Rundu secondary school)
>
> "*The girl already suffers because of her pregnancy, and the additional punishment of suspending her from school is very unfair.*" (principal, Khomasdal secondary school)
>
> "*If we allow mothers back immediately after giving birth, we would soon have more mothers than children at school.*" (principal, Gibeon secondary school)
>
> Extracts from H. Becker *et al*, *Teenage Pregnancy and the Right to Education*, Windhoek, November 1995.

Sex education in schools

Because of restrictive religious and cultural taboos imposed on the open discussion of sex and related issues, parents and teachers often do not provide youths with general and useful information about sex. A baseline survey conducted at the Dawid Bezuidenhoudt High School in Windhoek revealed that the only school authorities who had ever discussed sexual issues and teenage pregnancy were science teachers, but this was usually done only in presentations of biological issues without addressing social and cultural factors. Students felt that the school could potentially play an important role in helping to prevent teenage pregnancy.

School curricular materials and methods of teaching about AIDS have yet to be developed and implemented. There is a crucial need for both. Early sexual activity has contributed to the widespread presence of sexually transmitted diseases and 63% of reported HIV-positive cases in the age range 15-24 are female.[8]

> **TV NEWS ITEM**
>
> On Monday 14 August 1995 the principal of a school in the Omaheke Region stated that 20 out of 500 female pupils had dropped out in the past year due to pregnancy. This principal stated that he would be allocating a full-time teacher to teach sex education and that in his opinion as much attention should be paid to the subject of sex education as to mathematics and other "important" subjects.

The National Institute for Educational Development is currently integrating population and family life education, including sex education, into the primary and secondary school curricula, and states that it might also be necessary to revisit syllabi which have already been revised, such as the Life Science revised syllabus which delays the study of human biology to the Grade 10 year of the three-year course. Population and family life education should cover HIV/AIDS and other sexually transmitted diseases and contraception. Non-promotion subjects such as Guidance, Life Skills, Religious and Moral Education, Basic Information Science and Physical Education are to be treated as an integral part of the school curriculum and are not to be neglected in schools.

The Ministry of Basic Education & Culture also believes that teenagers should be provided with adequate information on criminal offences involving sexual abuse, as well as information on where and how to report a crime, the evidence needed and the support available. School libraries should have information available on population and family life education, and specifically on sexual issues (including contraceptive measures and where and how to obtain contraceptives). The school programme should also assist learners in applying a critical approach to television programmes, movies and fiction. In addition, the partnership between the Ministries of Basic Education & Culture and Health & Social Services needs to be strengthened.

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[8] Zimba & Mostert, "The Namibia Secondary School Students' Cognitive, Attitudinal and Behavioural Risks that May Promote HIV Infection and the Spread of AIDS", in K.K. Prah (ed), *Social Science Research Priorities for Namibia*, Windhoek, 1993, p.57.

Pre-service teacher education will familiarise teachers with population and family life education and the way in which it should be incorporated into the curriculum, and they will be trained to discuss these topics with learners. In-service training of practising teachers on these issues is also planned.

10.4 CURRICULUM DEVELOPMENT

After independence the Ministry of Education and Culture started far-reaching curriculum reform at junior and senior secondary levels. Lower primary curriculum changes should be in place by 1996 and it is anticipated that by 1999 there will be a new integrated approach to curricula in Namibian schools.

Unfortunately there is no task force which looks specifically at the issue of gender and curriculum development but according to the Deputy Director of the Namibia Institute for Educational Development (NIED), it is part of the Ministry of Basic Education & Culture's policy to eradicate all discrimination and to support equality on all levels. NIED staff members have also participated in gender-sensitisation workshops facilitated by the Department of Women Affairs.

The ministry does not write its own textbooks but designs the syllabi and teachers' guides, and contracts out to publishers with guidelines. There is no separate policy on the need to eradicate gender stereotyping in school textbooks, and specific guidelines on this point should be developed.

The incorporation of family life education into the curriculum has been discussed in the section above. Socio-economic and health problems pertaining to gender are being dealt with in "Social Studies" at primary level and "Life Skills" and "Arts Appreciation" at junior secondary level. A few special programmes presented at junior secondary level deal with teenage pregnancy, drug and alcohol abuse, AIDS and street children. It is submitted that programmes of this nature should be strengthened.

10.5 GENDER STEREOTYPING IN COURSE SELECTION AND CAREER CHOICE

Gender stereotyping is evident in the statistics given in Table 11 below, in terms of which subjects are most popular with boys and girls. The reader's attention is drawn to the following distinctions: 35,5% of girls take geography as opposed to 64,5% of boys; 21,1% of girls take Kwangali (the language spoken in the Rundu region) as opposed to 78,9% of boys, 38,2% of girls take Lozi (spoken in the Katima Mulilo region) as opposed to 61,8% of boys, 48,6% of girls take mathematics and science as opposed to 51,4% of boys, 29,4% of girls take computer science as opposed to 70,6% of boys; and only 2,9% of girls study technical drawing as opposed to 97,1% of boys. In an age where mathematics, science, computer know-how and other technical skills are often a prerequisite for job eligibility, these are highly disturbing statistics in respect of girls.

When it comes to the traditionally female domains of domestic science, needlework and shorthand typing, the girls are by far in the majority. It is interesting to note that many more girls than boys study art and music, and this may be because these subjects are regarded as "soft" options of no real economic value.[9] It is suggested that schools attempt to stop this pattern by, for example, introducing appropriate career guidance counselling for girls.

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[9] See also the discussion on cultural life in the chapter dealing with Article 13 of CEDAW.

Table 12 reveals that only 21.8% of women are registered at technical institutions as opposed to 78.2% of men, and the distribution by subject choice indicates that women do "feminine" courses such as hairdressing and typing whereas men tend towards courses like plumbing, bricklaying, etc

It is encouraging to note from Table 13 that more women than men are enrolled at the University of Namibia (61.1% to 38.9%). However, gender stereotyping in course selection is evident at this level too More women than men are enrolled for social work and nursing degrees whereas more men are enrolled for commerce and science degrees.

The ministry has embarked on a nationwide campaign to sensitise school principals on the need to eliminate gender stereotyping.

Gender statistics of school leavers entering professions in the defence force, police force and clergy are included in the chapter on CEDAW Article 7 concerning women in political and public life.

Tables 11, 12 and 13 on the following pages give the 1993 distribution of enrolments in Grade 12 and technical and university courses by sex and subject choice.

TABLE 11: Distribution of pupils in Grade 12 by sex and subject choice (1993)

SUBJECT	GIRLS		BOYS		%		
	#	%	#	%	Girls	Boys	Total
All subjects	20 607	100,0	19 669	100,0	51,2	48,8	100,0
Economic and Social Studies	5 733	27,8	5 337	27,1	51,8	48,2	100,0
Accounting	572	2,8	443	2,3	56,4	43,6	100,0
Business Economics	2 117	10,3	1 799	9,1	54,1	45,9	100,0
Business Management	76	0,4	73	0,4	51,0	49,0	100,0
Economics	1 058	5,1	1 129	5,7	48,4	51,6	100,0
Geography	357	1,7	649	3,3	35,5	64,5	100,0
History	1 553	7,5	1 244	6,3	55,5	44,5	100,0
Languages and Literature	7 014	34,0	6 642	33,8	51,4	48,6	100,0
Afrikaans	1 457	7,1	1 436	7,3	50,4	49,6	100,0
English	3 477	16,9	3 313	16,8	51,2	48,8	100,0
French	2	0,0	3	0,0	40,0	60,0	100,0
German	146	0,7	102	0,5	58,9	41,1	100,0
Kwangali	20	0,1	75	0,4	21,1	78,9	100,0
Oshiwanyama	333	1,6	286	1,5	53,8	46,2	100,0
Lozi	388	1,9	627	3,2	38,2	61,8	100,0
Oshindonga	1 191	5,8	800	4,1	59,8	40,2	100,0
Mathematics and Science	6 432	31,2	6 805	34,6	48,6	51,4	100,0
Agricultural Science	1 739	8,4	1 961	10,0	47,0	53,0	100,0
Biology	3 248	15,8	2 953	15,0	52,4	47,6	100,0
Computer Studies	10	0,0	24	0,1	29,4	70,6	100,0
Mathematics	933	4,5	1 159	5,9	44,6	55,4	100,0
Physical Science	502	2,4	708	3,6	41,5	58,5	100,0
Technical Studies	3	0,0	264	1,3	1,1	98,9	100,0
Electrical Work	0	0,0	3	0,0	0,0	100,0	100,0
Electronics	0	0,0	4	0,0	0,0	100,0	100,0
Engineering Drawing							
Engineering Science							
Fitting and Turning	0	0,0	5	0,0	0,0	100,0	100,0
Motor Body Repairing	0	0,0	10	0,1	0,0	100,0	100,0
Motor Mechanics	0	0,0	22	0,1	0,0	100,0	100,0
Panelbeating and Spraying							
Plumbing and Sheetmetal Work	0	0,0	4	0,0	0,0	100,0	100,0
Technical Drawing	3	0,0	99	0,5	2,9	97,1	100,0
Welding and Metalwork	0	0,0	4	0,0	0,0	100,0	100,0
Woodwork	0	0,0	113	0,6	0,0	100,0	100,0
Vocational Studies	804	3,9	144	0,7	84,8	15,2	100,0
Agricultural Production and Farming	77	0,4	101	0,5	43,3	56,7	100,0
Domestic Science	259	1,3	5	0,0	98,1	1,9	100,0
Needlework and Clothing	44	0,2	0	0,0	100,0	0,0	100,0
Practical Agriculture	0	0,0	20	0,1	0,0	100,0	100,0
Shorthand Typing	424	2,1	18	0,1	95,9	4,1	100,0
Other	621	3,0	477	2,4	56,6	43,4	100,0
Art	34	0,2	13	0,1	72,3	27,7	100,0
Biblical Studies	582	2,8	463	2,4	55,7	44,3	100,0
Music	5	0,0	1	0,0	83,3	16,7	100,0

Central Statistics Office (CSO), *Women and Men in Namibia*, August 1995, pp.47-48 (Source: MEC Annual Education Census for 1993).

TABLE 12: Distribution of pupils enrolled in technical institutions - by subject choice and sex (1993)

SUBJECT	WOMEN		MEN		%		
	#	%	#	%	Women	Men	Total
All Subjects	438	100.0	1 574	100.0	21.8	78.2	100.0
Languages							
Afrikaans	47	10,7	96	6.1	32.9	67,1	100,0
English	47	10.7	96	6.1	32.9	67,1	100,0
Business and Social Studies							
Accounting	23	5,3	5	0,3	82,1	17,9	100,0
Business Management	9	2,1	0	0.0	100,0	0,0	100,0
Office Administration	7	1.6	0	0.0	100,0	0,0	100.0
Communication and Deportment	55	12.6	49	3.1	52,9	47,1	100.0
Environmental Studies	11	2,5	0	0.0	100,0	0,0	100.0
Mathematics and Science							
Mathematics	16	3,7	288	18,3	5.3	94.7	100,0
Functional Mathematics	0	0,0	11	0,7	0.0	100,0	100,0
Computer Studies	7	1,6	0	0,0	100,0	0,0	100.0
Biology	7	1,6	0	0,0	100,0	0,0	100.0
Ecology	0	0.0	10	0.6	0,0	100,0	100.0
General Science							
Art of Entertainment	22	5.0	0	0.0	100.0	0,0	100,0
Bricklaying and Plastering	5	1,1	46	2,9	9.8	90.2	100.0
Carpentry and Joinery							
Educare	7	1.6	0	0.0	100,0	0.0	100,0
Electricity	0	0.0	6	0.4	0,0	100.0	100.0
Engineering Science	16	3.7	275	17.5	5,5	94,5	100.0
Fashion and Fabrics							
Fitting and Turning	0	0,0	3	0,2	0,0	100,0	100,0
Hairdressing	18	4.1	0	0.0	100,0	0,0	100,0
Metalwork	0	0.0	7	0.4	0,0	100.0	100.0
Motor Body Repairing	0	0,0	3	0,2	0,0	100,0	100,0
Motor Mechanics	0	0.0	102	6,5	0,0	100,0	100,0
Needlework and Clothing	18	4.1	0	0,0	100,0	0,0	100,0
Office Practice	42	9.6	0	0,0	100,0	0.0	100,0
Panelbeating and Spray Painting	0	0.0	3	0.2	0.0	100,0	100,0
Plumbing and Draining							
Plumbing and Sheetmetal Work	0	0,0	50	3.2	0,0	100,0	100,0
Technical Drawing	16	3,7	299	19,0	5,1	94,9	100,0
Technical Theory Practice	16	3.7	152	9,7	9,5	90,5	100,0
Typing	49	11.2	0	0.0	100,0	0,0	100,0
Welding and Metalwork	0	0,0	40	2,5	0,0	100,0	100,0
Woodwork	0	0,0	33	2,1	0,0	100,0	100,0

CSO, *Women and Men in Namibia*, August 1995, pp.49-50 (Source: MEC Annual Education Census for 1993).

TABLE 13: Percent distribution of full-time enrolment by sex and course at the University of Namibia (1993)

COURSE	WOMEN	MEN	WOMEN	MEN	TOTAL
TOTAL # ENROLMENTS	1 556	1 039	61,1	38,9	100,0
ALL COURSES	100,0	100,0	-	-	-
ARTS	12,1	15,7	53,6	46,4	100,0
Bachelor of Arts	8,0	13,8	46,4	53,6	100,0
Bachelor of Arts (Social Work)	2,3	0,9	80,0	20,0	100,0
Diploma in Social Work	1,2	0,3	85,7	14,3	100,0
Bachelor of Arts (Hons.)	0,6	0,8	55,6	44,4	100,0
ECONOMICS & MANAGEMENT SCIENCE	7,6	21,2	34,9	65,1	100,0
Bachelor of Commerce	4,0	10,0	37,3	62,7	100,0
Bachelor of Economics	2,2	5,9	35,8	64,2	100,0
Bachelor of Administration	1,4	5,3	28,6	71,4	100,0
EDUCATION	39,1	44,9	59,9	40,1	100,0
Bachelor of Education	1,7	4,2	37,1	62,9	100,0
HED (Secondary)	6,1	12,4	42,4	57,6	100,0
HED (Primary)	0,8	0,8	60,0	40,0	100,0
HED (Postgraduate)	1,4	3,2	40,0	60,0	100,0
HED (Technical)	0,0	0,5	0,0	100,0	100,0
HED (Post Diploma)	0,2	0,1	75,0	25,0	100,0
ED (Primary)	2,1	0,7	110,0	-10,0	100,0
ED Primary (Academy)	3,4	2,8	64,6	35,4	100,0
HPEC	23,5	20,3	69,4	30,6	100,0
HEALTH SCIENCES	38,2	8,1	87,6	12,4	100,0
University Diplomas					
Nursing Science Diploma	28,8	5,5	88,7	11,3	100,0
Nursing and Midwifery Science	3,5	1,7	75,3	24,7	100,0
Midwifery Science	0,6	0,1	90,0	10,0	100,0
National Diploma in Radiography	0,3	0,4	50,0	50,0	100,0
Advanced Diplomas in Nursing Science					
Critical Care	0,4	0,0	100,0	0,0	100,0
Nursing Education	0,4	0,1	85,7	14,3	100,0
Primary Health Care	0,6	0,0	100,0	0,0	100,0
Bachelor of Nursing Science	3,0	0,2	95,9	4,1	100,0
Bachelor of Nursing Science (Hons.)	0,5	0,0	100,0	0,0	100,0
Master of Nursing Science	0,2	0,0	100,0	0,0	100,0
Doctor of Nursing Science	0,0	0,1	0,0	100,0	100,0
SCIENCE	2,2	8,0	26,8	73,2	100,0
Bachelor of Science	2,2	8,0	26,8	73,2	100,0
SCHOOL OF THE ARTS	0,8	2,1	35,3	64,7	100,0
Practical Certificate (Music)	0,8	2,1	35,3	64,7	100,0

CSO, *Women and Men in Namibia*, August 1995, pp.51-52. (Source: University of Namibia)

NOTE:
HED = Higher Education Diploma; ED = Education Diploma;
SEC = Secondary Education Diploma; HPEC = Higher Primary Education Certificate.

10.6 SPECIAL SCHOOLS AND PROGRAMMES

Table 14 reflects enrolment in all special schools, which includes schools for children with learning difficulties and physical disabilities. These schools are the responsibility of the Division of Special Schools and Programmes in the Directorate of Special Education Programmes. No gender-related problems have come to light with regard to special schools.

TABLE 14: Enrolment in special schools by sex (1993)

	GIRLS		BOYS		TOTAL %	
	#	%	#	%	Girls	Boys
All special schools	354	100,0	560	100,0	38,7	61,3
Special schools	138	39,0	198	35,4	41,1	58,9
Special classes	163	46,0	301	53,8	35,1	64,9
Specialised education	53	15,0	61	10,9	46,5	53,5

CSO, *Women and Men in Namibia*, August 1995, p.50 (Source: MEC, Annual Education Census for 1993).

There are a variety of special programmes with gender dimensions. For example, the Division of Diagnostic, Advisory and Training Services within the Directorate of Special Education Programmes has been actively involved with therapy at the Women and Child Abuse Centres.[10] (The Women and Child Abuse Centre network is discussed in this report under Article 3.)

A tentative programme covering social skills, HIV/AIDS, alcohol and sex education (including the issue of teenage pregnancy) has been developed to "promote the choice of healthy lifestyles and to combat problems of irresponsible sexual behaviour resulting in teenage pregnancies and sexually transmitted diseases."[11] As noted above, the ministry is in the process of expanding its efforts in this area.

The ministry has admitted that it needs more full-time life skills teachers, since there is a tendency in schools at present to regard life skills teaching as less important. Life skills teachers at present also find themselves overburdened with tasks unrelated to life skills and counselling, and the ministry intends to remedy this situation.[12] The Legal Assistance Centre has recently produced a draft training manual for life skills teachers covering basic principles of law and human rights, which is due to be presented to the ministry for consideration and eventual inclusion in the life skills curriculum.

At present there is an industrial school for boys only, but a survey is being conducted by the ministry as to the viability of establishing such a school for girls.[13]

10.7 LITERACY PROGRAMMES

The Ministry of Basic Education & Culture has made a concerted effort to improve literacy in Namibia and it is encouraging to note that this is one of the most gender-sensitive areas in Namibian education.[14] Table 15 reflects enrolment in the National Literacy Programme (NLP) as of July 1994 according to region and gender. Of a total of 33 391 persons enrolled in the programme, 26 258 were women (79%).

The programme comprises three stages, each taking about a year to complete. Stage 1 is a basic literacy course, now available in 10 indigenous languages; Stage 2 builds fluency in reading and writing - still in local languages - through studies in health, civics, home economics, etc; and Stage 3 is a basic English course which is reinforced through a series of radio programmes developed by the ministry's Directorate of

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[10] MEC, *Annual Report* (fn 1), p.15.

[11] *Ibid*, p.17.

[12] *Ibid*, pp.15-16.

[13] *Ibid*, p.16.

[14] *Ibid*, p.37.

Broadcasting. District literacy programme organisers will receive training in 1996 in the use of legal educational materials developed by the Legal Assistance Centre, many of which concern women's rights.

TABLE 15: Enrolment in the National Literacy Programme in Namibia by sex and education region (July 1994)

REGION	PARTICIPANTS							
	Stage 1		Stage 2		Stage 3		Stage 4	
	# M	# F	# M	# F	# M	# F	# M	# F
Katima Mulilo	257	679	333	817	172	325	762	1 821
Keetmanshoop	184	319	76	181	117	197	377	697
Khorixas	205	243	218	303	198	207	621	753
Ondangwa East	1 324	5 846	436	1 786	174	947	1 934	8 579
Ondangwa West	599	5 050	226	2 651	254	1 467	1 079	9 168
Rundu	475	1 985	313	1 415	186	299	974	3 699
Windhoek	677	832	322	384	387	325	1 386	1 541
Total	3 7213 721	14 954	1 924	7 537	1 488	3 767	7 133	26 258
STAGE TOTAL	18 675		9 461		5 255		33 391	

MEC, Annual Report (1994), p.38.

Voluntary testing conducted in 1994 involving 69% of the total enrolled in the NLP revealed that of those who passed, 80% were women and 20% men. (This figure was in proportion to the total enrolment figures.) Drop-out rates are higher among men than women.

With the creation of the Directorate of Adult Basic Education in 1995 it is anticipated that clearer status will be given to literacy and related programmes. While the high rate of women both in literacy programmes and continuing education is gratifying, when these programmes are expanded an attempt will be made to enrol more men since "national data indicates that men are equally in need of adult education and must also be reached to achieve the national target."[15]

10.8 WOMEN IN EDUCATIONAL POSTS

The Ministry of Basic Education & Culture and the Ministry of Higher Education, Vocational Training, Science & Technology are the biggest employers of women in Namibia, yet management is male-dominated. A total of 30,6% of employees in education management are women, whereas 69,4% are men. Both the Ministers and one Deputy Ministers of these two ministries are men, while only two directors and no deputy directors are women. More sectional heads (63,2%) are women than men (36,8%). The majority of primary school principals are men (66,7%), and a similar situation prevails at both the combined and senior secondary school levels. These statistics indicate that both education ministries need to take assertive affirmative action measures to involve more women in the planning and implementation of educational policy.

Notwithstanding the under-representation of women on a management level, women constitute the majority of teachers in Namibia at 60,6%. Of the total percentage of women teachers, 55,2% have had no teacher training.

There are no women in senior positions at the University of Namibia and at the middle level only 23,7% of employees are women. Only 13,6% of the UNAM professors are women, whereas a 67,1% majority of junior lecturers are women.

Tables 16, 17 and 18 below reflect the distribution by sex of persons employed in education management posts; the distribution of teachers by academic qualification; and the distribution of persons employed at the University of Namibia.

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[15] *Ibid*, p.42. The National Literacy Programme is evaluated in A. Lind, *Free to Speak Up*, Windhoek, 1994.

TABLE 16: Number of persons in education management by position and sex (1994)

POSITION	WOMEN		MEN		%		
	#	%	#	%	Women	Men	Total
All positions	491	100,0	1 115	100,0	30,6	69,4	100,0
Headquarters	15	3,1	38	3,4	28,3	71,7	100,0
Under-Secretary	0	0,0	2	0,2	0,0	100,0	100,0
Directors	3	0,6	16	1,4	15,8	84,2	100,0
Deputy Directors	0	0,0	13	1,2	0,0	100,0	100,0
Sectional Heads	12	2,4	7	0,6	63,2	36,8	100,0
Regions	0	0,0	7	0,6	0,0	100,0	100,0
Directors	0	0,0	7	0,6	0,0	100,0	100,0
Schools	476	96,9	1 070	96,0	30,8	69,2	100,0
Primary							
Principals	303	61,7	608	54,5	33,3	66,7	100,0
Deputy Principals	37	7,5	54	4,8	40,7	59,3	100,0
Combined Schools*							
Principals	81	16,5	228	20,4	26,2	73,8	100,0
Deputy Principals	34	6,9	40	3,6	45,9	54,1	100,0
Senior Secondary Schools							
Principals	6	1,2	96	8,6	5,9	94,1	100,0
Deputy Principals	10	2,0	35	3,1	22,2	77,8	100,0
Special Schools							
Principals	3	0,6	3	0,3	50,0	50,0	100,0
Deputy Principals	1	0,2	1	0,1	50,0	50,0	100,0
Teacher Training Colleges							
Principals	1	0,2	3	0,3	25,0	75,0	100,0
Deputy Principals	0	0,0	2	0,2	0,0	100,0	100,0

CSO, *Women and Men in Namibia*, August 1995, p.53 (Source: Ministry of Basic Education & Culture).

TABLE 17: Distribution of teachers by academic qualification and sex (1993)

TEACHER TRAINING QUALIFICATION	WOMEN		MEN		%		
	#	%	#	%	Women	Men	Total
Total teachers	9 263	100,00	6 017	100,00	60,6	39,4	100,0
No teacher training	2 758	29,77	2 235	37,14	55,2	44,8	100,0
Grade 10 / lower to enter	3 113	33,61	1 851	30,76	62,7	37,3	100,0
1-2 years after Grade 12	1 381	14,91	772	12,83	64,1	35,9	100,0
3-4 years after Grade 12	1 333	14,39	709	11,78	65,3	34,7	100,0
Post-graduate diploma	546	5,89	294	4,89	65,0	35,0	100,0
Post-graduate professional educational degree	132	1,43	156	2,59	45,8	54,2	100,0

CSO, *Women and Men in Namibia*, August 1995, p.54. (Source: MEC Annual Education Census for 1993)

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TABLE 18: Employed persons at the University of Namibia by position and sex (1994)

POSITION	WOMEN		MEN		%		
	#	%	#	%	Women	Men	Total
Total administration	155	100,0	192	100,0	44,7	55,3	100,0
Senior	0	0,0	7	3,6	0,0	100,0	100,0
Middle level	9	5,8	29	15,1	23,7	76,3	100,0
Academic							
Professors	3	1,9	19	9,9	13,6	86,4	100,0
Lecturers	92	59,4	112	58,3	45,1	54,9	100,0
Junior	51	32,9	25	13,0	67,1	32,9	100,0

CSO, *Women and Men in Namibia*, August 1995, p.54. (Source: University of Namibia)

10.9 GENDER ISSUES IN STUDENTS' ORGANISATION

The issues of women's emancipation, gender equality and the empowerment of women have been priorities of the Namibian National Students' Organisation (NANSO) since its inception in 1984. NANSO's policy document on women states that the full and complete development of Namibia depends on the maximum participation of women on equal terms with their male counterparts in all fields. NANSO has also established a National Women's Sub-committee which annually convenes a Women's Conference where issues around women's empowerment and socio-political status are discussed. The committee itself addressed the problem of teenage pregnancy in a resolution adopted at a 1993 conference, by declaring that the right of a pregnant schoolgirl to continue her education is an inalienable right of all students, which must be recognised throughout the country.

ARTICLE 11

Labour Development[1]

11.1 SIZE OF THE LABOUR FORCE

To conform with international practice, statistical data will only be provided in this article for the labour force population aged 15 years and above. This approach excludes about three per cent of the total labour force aged below 15 years. Around 13 801 or 8% of all children aged 10-14 years belong to the labour force and close to 90% of these children work in the agricultural sector, mainly as unpaid family workers.[2] The above is an indication of the extent of child labour in the country, notwithstanding that section 42(a) of the Labour Act of 1992 prohibits the employment of a child under the age of 14.[3]

About 479 779 persons (58,4%) of the total Namibian population are economically active and hence belong to the labour force. Of these, about 388 014 persons (81%) are employed and about 91 765 (19%) are unemployed. The total number of those earning an income is 305 101, or 65,6% of the total labour force. Of those currently unemployed, one out of four people had worked before. This situation could be due to the fact that major economic sectors such as mining have witnessed significant employment contraction as the result of both the world recession and mechanisation of operations.

11.2 EMPLOYMENT BY URBAN/RURAL AREAS AND AGE

A breakdown by urban and rural areas reveals that 64% of people in urban areas belong to the labour force, i.e. they are economically active. This is 8% higher than the figure for rural areas at 56%. Women in rural areas have the lowest employment activity rate in comparison to their counterparts in the urban areas and males in general. However, the low activity rate for women in rural areas might be underestimated as the majority of women are involved in domestic duties (homemaking) which have been classified in the 1991 Population and Housing Census data as "inactive activity".

TABLE 1: Labour force participation rate: 15 years and above, by sex and urban/rural areas

	% URBAN	% RURAL	TOTAL COUNTRY %
Males	75%	65%	69%
Females	53%	48%	49%
Both sexes	64%	56%	58%

Central Statistics Office (CSO), *Women and Men in Namibia*, August 1996, pp.16-17
(Source: 1991 Population and Housing Census).

The labour force participation rate for men is about 90% in the age range 25-59 with a peak of 93% for those aged 35-39. On the other hand, the rate for women aged 25-59 is only 60% and peaks at 67% for those aged 25-29. Both men and women in these age groups who are not economically active have homemaking as their main activity. Again, the classification of homemaking as an economically inactive activity, tends to underestimate the participation rate of women in the labour force.

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[1] Unless otherwise stated, the data for this article has been sourced from: Central Statistics Office (CSO), *1991 Population and Housing Census: Basic Analysis with Highlights*, Windhoek, 1994.

[2] An "unpaid family worker" is a person who works without pay for a relative.

[3] Labour Act 6 of 1992, p.52.

11.3 EMPLOYMENT BY STATUS AND INDUSTRY

Almost 40% and 20% of all employed persons are employees in the private and government sectors respectively. Almost one out of three persons employed by the Government is female. Almost the same proportion applies to the private sector. Slightly over 21% of all employed persons are unpaid family workers. Of these, 70% are women of whom 80% work in the agricultural sector. Around 20% of all employed people are own account workers.[4] About 50% of the own account workers are women of whom 80% carry out agricultural activities. The employers[5] amount to 2% of all the employed and only about 15% of these are women.

The number of women in agriculture amounts to 51% of all employed women in contrast to about 43% of all employed men. Female workers in agriculture are made up as follows: unpaid family workers - 60%, and own account workers - 35%. Again this shows that very few women are employed in the formal economic sector. Males working in the agricultural sector mainly consist of private sector employees - 37%, own account workers - 32%, and unpaid family workers - 25%. This is an indication that formal employment favours men over women. The second largest industry in terms of female employment is private households, which employ 10% of all employed women, followed by trade and education with 8% each and manufacturing with 7%.

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[4] An "own account worker" has no hired or paid employees but may have unpaid family workers.

[5] An "employer" operates their own business with paid employee/s.

11.4 EMPLOYMENT BY OCCUPATION AND EDUCATION

Subsistence agricultural and fishery workers form the largest occupational group, numbering about 138 000 persons, of whom about 60% are women. The second largest occupational group is made up of craft and trade workers, totalling 45 000 persons, of whom 25% are women. The third group comprises sales and services elementary workers, with 38 000 persons, of whom 63% are women. Office and custom clerks are also mostly women. The numbers of men and women in various professional fields such as teaching and marketing are more or less balanced. Examples of male-dominated occupations are machine and plant operation (99% males), the armed forces (96%), mine labour (92%), and management and senior officialdom (almost 80%).[6]

The majority of women with no schooling are concentrated in the agricultural, hunting and forestry industries, totalling about 77,5%. The next largest concentration of women with no schooling is in the private household industry which employs domestic workers. About 65% of those women with primary education are also concentrated in the agricultural sector, followed again by private households with 11,5%. Women with secondary education are spread among the various industries as follows: agriculture - 24,9%; wholesale and retail trade - 16,9%; education - 12%; private households - 11,1%; health and social services - 9,1%; public administration - 6,6%; electricity, gas and water supply - 5,8%; and a further 13,64% work in the remaining industries.[7]

Well-educated women, i.e. those with post-secondary education, are mainly employed in the education industry, with about 34,8% having technical/vocational training, 88,9% teacher training and around 34,7% various university degrees. The next two largest industries employing women with post-secondary education are health and social work, and community, social and personal services. Thus, women with secondary education and below are largely concentrated in the agricultural and private household industries, while those with post-secondary education are concentrated in the educational, social, health and personal service industries.[8]

11.5 A PROFILE OF THE UNEMPLOYED[9]

Unemployment is higher in urban areas at 26% than in rural areas at 15%. This is due to the fact that people are normally more active in seeking employment in urban areas and there are more job opportunities in urban areas. The unemployment rate for women in urban areas is higher at 30% than that for men at 24%. However, the converse is true in rural areas where 13% of women are unemployed outside of the household compared with 17% of men.

TABLE 2: Unemployment by sex and urban/rural areas

	URBAN AREAS		RURAL AREAS		TOTAL	
	#	%	#	%	#	%
Males	25 274	24	27 498	17	52 772	20
Females	20 478	30	18 515	13	38 993	19
TOTAL	45 752	26	46 008	15	91 765	19

CSO, *Women and Men in Namibia*, August 1996, pp.19-20 (Source: 1991 Population and Housing Census).

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[6] CSO, *Women and Men in Namibia*, August 1995, p.25

[7] *Ibid*, p.29

[8] *Ibid*, p.26

[9] Unemployment was defined to include persons who were not in any form of paid employment or self-employment during the referenced period; or who were actively looking for work; or who were available for work if offered a job. The census also distinguished between those who had previously worked and first-time job-seekers.

Women in urban areas aged 15-19 years have the highest unemployment rate at 66%. For the whole country the rate is slightly higher for women in younger age groups and higher for men over 30 years old. About 55% of all unemployed women attained a highest educational level of some secondary schooling. Around 33% completed primary school, while about 11% never attended school.[10] This is evidence that women with no professional qualifications find it difficult to gain employment outside of the traditional agricultural and private household industries. It seems that employers are actively discriminating against female job-seekers, even when they have attained higher qualifications.

The gap between economically active men and women is smaller in northern Namibia where subsistence agriculture is the main source of employment opportunities. In the northern region of Omusati women are even more economically active than their male counterparts. One reason seems to be that unpaid family workers are predominant in Omusati where 30% of all unpaid family workers in the country are located and the majority of these are women. However, the unemployment rate at national level is about the same for men (20%) and women (19%).

At the regional level there are large differences in unemployment rates of men and women. The urban or formal sector employment is male-selective and rural or informal sector employment is female-selective.

11.6 WAGE DIFFERENTIALS

An exhaustive and accurate assessment of wage and salary levels in Namibia is not possible at the moment given the dearth of reliable data. For example, the only reliable and most recent research on wage levels conducted by the Ministry of Labour and Human Resources failed to collect information at the level of sex. Thus, even the available data is usually not disaggregated by sex. However, it is possible to make some inferences and estimates given our knowledge of the various industries dominated by women.

In Namibia there are wide disparities and marked inequalities in wage and salary levels, and these exist at different levels, for example, between the various population groups (especially white and black), between regions, and across and within the various economic sectors. The *Establishment Survey of 1992/93* conducted under the auspices of the Ministry of Labour and Human Resources confirmed that wages vary according to industry, occupation, size of enterprise and other characteristics.[11]

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[10] *Ibid*, p.29.

[11] Ministry of Labour & Human Resources Development, *Employment Structure and Wage Levels in Namibia: A Report Based on Establishment Survey 1992/93*, 1994, p.57.

The structure of wages in Namibia is characterised by substantial variations within and across both the industrial and occupational categories. A comparative study of remuneration scales across the main sectors of the formal economy indicates that mining and finance pay the highest wages and the agricultural sector the lowest. In terms of occupational wage levels, agricultural labourers, for instance, are paid N$366 per month which is less than half the wage of workers in elementary occupations, who earn N$656. Similarly, senior managers in the mining sector are paid twice the overall average of their occupational group.[12]

It appears that women are concentrated in industries, occupations, types of establishments and wage brackets associated with low levels of payment. It has already been established that the majority of women are predominantly involved in subsistence agriculture, domestic work and social services, all of which lie on the lowest rung of the wage distribution ladder. In terms of other skilled occupations, women are dominant in clerical and sales work whereas in the well-paying categories their numbers are negligible. Female representation in the two top-earning occupational categories, i.e. professionals and senior managers, is 44% and 22% respectively.[13] Within each of these categories, women are likely to be concentrated in the lowest-paying brackets.

Interesting observations can be made in analysing the distribution of salary groupings by sex among public service employees in Namibia. Around 89,8% of all women and about 88,3% of all men earned an annual salary of less than N$30 000 during 1994. A further 9,6% of all women and 9,7% of all men are to be found within the N$30 000 - N$73 454 salary grouping. About 0,7% of all women and about 1,9% of all men are located in the highest salary bracket of N$73 455+, which is usually associated with top management.[14]

However, marked disparities are discernible in comparing female to male earnings per salary bracket as a percentage of the total. Proportionally there are more men (67,7%) than women (32,3%) concentrated in the lowest salary grouping of less than N$10 000. In the income groups N$10 000 - N$19 999 and N$30 000 - N$49 999, there is a good balance in the earnings of both women (50,1%, 43,6%) and men (49,9%, 56,4%) respectively. About one out of three persons in the salary grouping N$20 000 - N$29 999 is a female.

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[12] *Ibid*, p.79.

[13] *Ibid*, p.75.

[14] CSO, *Men and Women in Namibia*, August 1995, p.32.

However, in the top two salary groupings, i.e. N$50 000 - N$73 454 and N$73 455+, female representation is very low. Only about 30% and 20% of women are represented in the former and latter categories respectively. This corresponds with the general employment pattern in that only one-third of all government employees are women. Although women are generally under-represented in high income brackets and positions of authority, their situation has improved considerably since independence, mainly due to the implementation of the affirmative action policy.

11.7 CONSTITUTIONAL AND LEGISLATIVE MEASURES

The Constitution

As detailed in Article 1 of this report, the Namibian Constitution prohibits discrimination on the basis of sex, among other things. The Constitution also makes provision for the enactment of legislation and adoption of policies aimed at redressing historical injustices suffered by women. The chapter on Principles of State Policy sets out the issues which need to be tackled in order to improve and promote the welfare of Namibians. Among these are a number of second and third generation human rights, such as equality for women, upgrading of health standards, encouragement of trade unions, a living wage for workers, the plight of senior citizens, the unemployed, the disabled, and the disadvantaged.[15]

Article 95 of the Constitution stipulates that the State shall:

> *(1)* *... ensure the implementation of the principle of non-discrimination in remuneration of men and women ... provide maternity and related benefits for women;*
>
> *(2)* *... ensure that the health and strength of the workers, men and women, and the tender age of children are not abused ... ;*
>
> *(3)* *... [encourage the] formation of independent trade unions to protect workers' rights and interests ... ;*
>
> *(4)* *... ensure that the unemployed, the incapacitated, the indigent and the disadvantaged are accorded such social benefits and amenities as are determined ... to be just and affordable ... ;*
>
> *(5)* *... [ensure] that workers are paid a living wage adequate for the maintenance of a decent standard of living ...*"[16]

Labour Act of 1992

Prior to independence workers' organisations were suppressed by the state. However, upon independence the incoming Government committed itself to the promotion of sound labour relations and fair employment practices based on the principle of tripartism. To this effect the National Assembly passed the Labour Act in 1992. The act sets minimum working conditions and allows for employers and employees to bargain for better than the minimum conditions. Hence wages tend to be higher in those sectors where workers are represented by unions.

The act provides for the following structures: Labour Commissioner, Labour Inspectors, Labour Advisory Council, Labour Court and District Labour Courts, and Wages Commission. The latter's task is to address the issue of a minimum wage, especially for industries such as agriculture and private households, where trade union representation for employees is fairly weak and wage levels are lowest.

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[15] D. van Wyk *et al*, *Namibia: Constitutional and International Law Issues*, p 56

[16] Namibian Constitution, Article 95

The Labour Act prohibits employers from practising unfair discrimination or harassment in the workplace. Article 107 of the act states that nobody should be discriminated against or be subjected to any harassment on the grounds of his/her sex, marital status, family responsibilities, sexual orientation, race, colour, disability, etc, in relation to his/her employment. In addition, nobody should place any advertisement or notice which intends to unfairly discriminate in the employment or occupation of persons on the above-mentioned grounds.

During 1995 the President of Namibia appointed a Commission of Enquiry into Labour Related Matters Affecting Agricultural Employees and Domestic Employees, which is required to finalise its report by 30 October 1995. Unfortunately, due to the current drought its operation has been indefinitely deferred. However, community-based organisations, NGOs and trade unions are continuing to conduct research into the living and working conditions of these two vulnerable groups, with a view to making recommendations to the commission when its sessions begin.

Social Security Act of 1994

Before the passage of the Social Security Act, Namibian workers were not covered by any comprehensive and efficient social security system. Social protection against unemployment never existed and pensions were only provided for public sector employees and those of a few big companies. Old age pensions were provided for those over 65 years of age. Workmen's compensation - which was only provided for formal sector employees - was also inadequate. Safety at work was also not sufficiently provided for.[17]

The Social Security Act has reversed the situation by providing a framework within which the welfare provisions contained in the Constitution can be realised. The act provides for the establishment of a Social Security Commission charged with the duty to administer a number of funds for employees. These funds are: (1) the Maternity Leave, Sick Leave and Death Benefit Fund; (2) the National Medical Benefit Fund; (3) the National Pension Fund for retired employees; and (4) the Development Fund which provides funds for training schemes for disadvantaged and unemployed persons.[18] The Accident Fund provided for under the Employees Compensation Amendment Act of 1995 has also been transferred to the Social Security Commission for administration purposes.

Employees' compensation

In its First Annual Report for the period 6 May to 31 March 1994, the Labour Advisory Council provides useful data on the extent of coverage by the Workmen's Compensation Act of 1941, in terms of the number of enterprises and employees involved. Information on the number and type of occupational accidents and diseases, as well as their geographical and industrial distribution, is also included. Unfortunately, this data is not disaggregated by sex.

For the period March 1990 to February 1991, about 5 282 individual enterprises covering about 81 149 employees were registered with the Workmen's Compensation Fund. During this period, around 4 998 accidents - of which 37 were fatal - were recorded. The majority of occupational diseases occurred in the mining sector (29%), followed by both the government sector (21%) and the building industry (21%).[19]

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[17] M. Korner-Dammann, *Labour in Namibia at Independence*, ILO, Windhoek, 1990, pp.125-126.

[18] Social Security Act 34 of 1994.

[19] Labour Advisory Council (Ministry of Labour & Human Resources Development), *First Annual Report for the Period 6 May 1993 - 31 March 1994*, 1995.

The Workmen's Compensation Act of 1941 has been amended by the Employees' Compensation Amendment Act of 1995. The amended act is meant to adjust the provisions of the old act to bring it in line with the Constitution, and to extend the provisions of the act to include domestic employees and other vulnerable occupational groups. The amended act has also replaced the word "workmen" with the more gender-sensitive word "employee". (This gender-sensitive approach is also evident in the replacement of the word "manpower" with the words "human resources" in the case of the Ministry of Labour and Human Resources Development.)

Maternity leave and maternity benefits

Prior to independence there was no maternity protection for most Namibian employees. The Conditions of Employment Act 12 of 1986 provided that no woman could be required or allowed to work in a factory from the period beginning four weeks before the expected date of birth and ending eight weeks afterwards, but there was no legal requirement that *any* maternity leave be granted to women who were employed in places other than "factories". Also, the maternity leave which was provided for did not have to be paid leave, and there was no protection against dismissal.

The Namibian Constitution committed the government to the goal of enacting legislation to provide "maternity and related benefits for women",[20] and this goal has recently been achieved, although some problems with the existing legal framework still need to be addressed.

The Labour Act 6 of 1992 guarantees all female employees who have been working for the same employer continuously for at least one year the right to 12 weeks of maternity leave - at least four weeks of leave before the expected date of confinement and at least eight weeks of leave after the date of birth. In late 1994 the Labour Act was supplemented by a Maternity Leave, Sick Leave and Death Benefits Fund established in terms of the Social Security Act to provide for maternity benefits to women on maternity leave.

Virtually all employees, male and female, must be members of this fund, and matching contributions must be made to the fund by the employer and employee. These contributions are currently set at 0.9% of the employee's salary, with a minimum contribution of N$2,70/month and a maximum contribution of N$27,00/month by each party. Any woman who has been a member of the fund for at least six months is entitled to receive 80% of her basic remuneration during her maternity leave, up to a maximum remuneration level of N$3 000/month. This income support, which came into operation in December 1995, will operate to make the maternity leave provided by the Labour Act into a more meaningful right. This approach to maternity benefits should also help to prevent discrimination against women in the labour market.

The Ministry of Labour & Human Resource Development consulted the DWA and NGOs in order to solicit their input on its draft policy document on maternity benefits. For example, the ministry proposed a sliding scale of benefits which would be reduced for each additional birth - 80% of the basic wage for the first child, falling to 70% of the basic wage for the second child, 50% for the third child and 45% for the fourth and subsequent children. However, after women from a spectrum of women's groups registered strong objections to this approach, the ministry agreed to the principle that maternity benefits should be set at a uniform level for all births.

Women's groups and other NGOs have pointed to several other problems with the act which are in need of attention. For example, one objection which has been cited is the inconsistency between the Labour Act and the Social Security Act with respect to the definition of "employee". While the Labour Act defines "employee" comprehensively, the Social Security Act limits the definition of "employee" to persons who work for an employer for more than two days a week - a limitation which could have a particularly detrimental impact on women in domestic service, which is one of the major sectors of employment for women. The current policy is based on concerns about the difficulty of enforcing the act for casual employees. The ministry is planning to implement the act in respect of domestic workers by collecting the required contributions together with municipal accounts in urban areas. Once the fund has been in operation for some time, it will be possible to make a more accurate assessment of enforcement difficulties and how they might be overcome.

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[20] Namibian Constitution, Article 95.

A second conflict between the Labour Act and Social Security Act concerns a discrepancy between entitlement to maternity leave and entitlement to maternity benefits. A woman is eligible for maternity benefits if she has been contributing to the fund for at least six months, regardless of how many employers she has worked for during this period. However, entitlement to maternity leave under the Labour Act is dependent upon the completion of at least 12 months of continuous service in the employment of a single employer. Here, the current policy is based on compromises hammered out during tripartite consultations between government, trade unions and employer organisations. Although the Government is aware of the discrepancy, the Labour Act is unlikely to be amended on this point unless new agreements are reached between the Government's social partners in the labour sector.

Some NGOs have pointed to a need for more clarity on the treatment of confinements which are earlier or later than expected.[21] Other groups have suggested that benefits in respect of a child who dies at birth or within the next two weeks should continue for six weeks from the date of death rather than only for four weeks as the act currently provides. These issues may be taken up in future if they prove to create problems in practice.

The administration of the Social Security Act is supervised by a Social Security Commission which includes representatives from government, trade unions and employer organisations. The statute requires that at least three members of the 10-member commission be female, and the current commission includes four women among its members. The Chief Executive Officer of the Commission's Secretarial is a woman.

The rights to maternity leave and maternity benefits are reinforced by the Labour Act's strong maternity protection. A woman on maternity leave may not be deprived of any rights to which she was entitled before the leave period began, including rights relating to seniority or promotion. The Labour Act also requires that any medical aid and pension benefits to which she is entitled must continue uninterrupted during maternity leave.[22]

The Constitution states that one of the goals of state policy will be adherence to the international conventions and recommendations of the International Labour Organisation (ILO).[23] Namibia has not yet become a party to any of the ILO conventions on maternity protection, but will probably do so in due course.

Paternity leave

The Labour Act makes no provision for paternity leave, and very few businesses or NGOs voluntarily offer their employees the option of paternity leave at present. Although some trade unions have advocated the introduction of a right to paternity leave for a short period immediately following the birth of a child, public opinion on this issue is divided. Some men and women have expressed doubts that such leave would be used for the intended purpose in Namibia's current social context (where child care is viewed by many as the mother's sole responsibility), while others have argued that the potential abuse of a right is not a valid argument for denying it to those who would exercise it responsibly. This is an area where further discussion and debate is needed to guide government policy.

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[21] See Social Security Act 34 of 1994, section 29(2).

[22] Labour Act 6 of 1992, section 41.

[23] Namibian Constitution, Article 95.

> *"Participants at a National Safe Motherhood Conference held in 1991 recommended that the Government consider implementing paid paternity leave of five days for married men to enable them to help care for the family."*
>
> Ministry of Health & Social Services
> *Proceedings of the National Safe Motherhood Conference*, Windhoek, 26-28 November 1991, p.5

Protection against dismissals

Women are protected against dismissal by the Labour Act, which forbids discrimination on the grounds of sex, marital status and family responsibilities in all aspects of employment. There is an exception to this principle in respect of pregnant women who cannot carry out their jobs, or are prohibited by law from performing the work in question.[24]

However, a female employee may not be retrenched during maternity leave or upon her return to work, or dismissed on the grounds that she is incapable of continuing to perform the job, unless the employer has taken all reasonable steps to offer her suitable alternative employment.[25] Any other dismissal of a woman stemming from her pregnancy or her entitlement to maternity leave would probably constitute an unfair dismissal in terms of Namibia's Labour Act.[26]

The protection against discrimination on the basis of family responsibilities applies "to the responsibilities of any person towards his or her dependent children in need of his or her care or support which impairs such person's preparation for, entry into, or participation or advancement in, employment or occupation."[27] One weakness of this definition is that it excludes responsibilities to family members other than children, such as elderly relatives or adult relatives who may be in need of special care because of sickness or disability.

Where discrimination which is forbidden by the Labour Act occurs, the Labour Court is empowered to order that the discriminatory practice be stopped, or to make any other order that the circumstances require.[28] Such discrimination is not a criminal offence.

Child-care facilities and other support services

The challenge of finding ways to combine family responsibilities with work is a difficult one for many Namibian women. Very few employers offer child care facilities at the workplace, and the Government was forced to close the last of its pre-primary schools in 1994 because of budgetary constraints. There are a variety of creches, day-care centres and kindergartens run by churches and NGOs, and by private individual women as an income-generating activity, but the costs of this form of child care are prohibitive for many working women. These services are also located mainly in the major urban centres, leaving rural women to carry a greater burden of child minding, with negative consequences for women in the labour market.

As a result, both urban and rural mothers often turn to extended family members or friends to assist with child care. The Demographic and Health Survey of 1992 found that 37% of Namibian households included children under the age of 15 who were living apart from both parents.[29] Grandmothers are often the primary caretakers of their grandchildren, particularly in the case of children born to single mothers. Where children are not sent to another household, older siblings may take a large portion of the responsibility for the care of younger children, and school-age children may spend a portion of the day with no adult supervision. Both the Ministry of Education & Culture and the Ministry of Youth & Sport have recently responded to the problem of unsupervised children by opening after-school activity centres in some areas.

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[24] Labour Act 6 of 1992, section 107.

[25] Labour Act 6 of 1992, sections 107 and 41.

[26] See Labour Act 6 of 1992, section 45.

[27] Labour Act 6 of 1992, section 107(5)(c).

[28] Labour Act 6 of 1992, section 107(1).

Where mothers are in a position to take advantage of creches, kindergartens or other pre-school programmes, the quality of the services available varies greatly in terms of facilities, the involvement of appropriately-trained personnel, and the scope of activities which are provided - with variations often stemming from the resources available in the community being served.

The Government is in the process of shifting its focus to training and support for early childhood development initiatives, in lieu of attempting to provide pre-primary programmes directly, and this policy may help to improve the educational component of child care services in future. For example, the Education, Training and Employment gender sectoral committee established with the assistance of the DWA has plans to facilitate workshops on Early Childhood Development for pre-school teachers, and to conduct in-service training for day care attendants which may include an exchange programme between different pre-schools.

All places of care which accommodate more than six children are expected to register with the Ministry of Health & Social Services in terms of the Children's Act, but this requirement is not widely observed. The regulations which are in force were inherited from South Africa, and the standards which they embody are beyond the reach of most Namibian communities. The ministry is in the process of revising the relevant legislation, and a new regulatory scheme should help to assure a basic minimum standard of care in all child care facilities.

There is still scope for the development of additional policies to support working parents without disadvantaging them in the competition for jobs. For example, one area which warrants further investigation is the introduction of incentives to encourage employers to offer child care facilities at the workplace. Other areas which could be explored include the possibility of allowing employees to utilise the sick leave guaranteed by the Labour Act for the care of sick children, or the introduction of "parental leave" which could be used to attend to the needs of children or other dependent family members. Options such as these may be considered in future, although the restrictions of Namibia's economic climate must be kept in mind.

Breastfeeding and working mothers

The absence of affordable child care options (which often results in mothers sending children to live with extended family members) and the absence of child care services at the workplace in particular, make it difficult for working mothers to continue breastfeeding. According to the 1992 Demographic and Health Survey, breastfeeding typically continues for 17.3 months, with urban mothers - who are more likely to be engaged in formal employment - tending to breastfeed less frequently and to discontinue breastfeeding sooner than rural mothers. Rural mothers typically breastfed for 18.5 months, and urban mothers for 12.9 months. About 72% of urban mothers with children under six months breastfed more than 6 times in a 24-hour period, as compared to about 86% of rural mothers. Full breastfeeding (exclusive breastfeeding or breast milk supplemented only with water) is typically practised by all mothers for only 1.7 months.[30]

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[29] Ministry of Health and Social Services, *Demographic and Health Survey 1992*, May 1993, p.9. See also Social Sciences Division (UNAM), Legal Assistance Centre & UNICEF, *Children in Namibia: Reaching Towards the Rights of Every Child* (Final Draft), 29 May 1995, p.52.

The Ministry of Health & Social Services introduced a Mother-Baby Friendly Initiative in the early 1990s to promote breastfeeding. Staff in health facilities have received training in practices which promote breastfeeding, and 17 out of 36 health facilities have been certified as Baby and Mother Friendly. One component of this programme is to encourage employers to facilitate continued breastfeeding by working mothers, by providing appropriate times and places for expressing breast milk. The Labour Act is currently silent on the issue of breastfeeding and one area which needs further exploration is what kind of arrangements - such as periodic work breaks or flexible working hours - would be useful in the promotion of breastfeeding.

> *"The employer plays an important role in promoting [the Mother-Baby Friendly Initiative] since the working mother spends a good part of her day at work. Opportunities for breastfeeding at work can be provided and the mothers encouraged to breastfeed during tea times and lunch hours. Further there should be facilities for lactating mothers who want to express their milk and store it for later use at home. Employees should be understanding and supportive to their breastfeeding colleagues at the workplace."*
>
> Republic of Namibia, *Towards a Mother-Baby Friendly Nation: The Mother-Baby Friendly Initiative Guidelines*, October 1992, p 16

The Ministry of Health & Social Services is currently working in consultation with the Legal Assistance Centre and the Breastfeeding Association of Namibia to draft a law which will promote breastfeeding and regulate advertising of breast milk substitutes.

Health and safety protection for pregnant women

There are at least two legal provisions in force dealing with protection for the health and safety of pregnant women.

The Labour Act specifies that no woman may be employed for night work eight weeks before and eight weeks after childbirth, or for any additional period which is medically necessary for the health of the mother or the child.[31]

Regulations promulgated under the Hazardous Substances Ordinance require that any radiation worker (which includes persons who work with X-ray equipment) who becomes pregnant must be dismissed, although the Labour Act would require that such a woman must be offered reasonable alternative work.[32]

The portions of the Labour Act concerning the health and safety of workers have not yet replaced the old pre-independence legislation. The health and safety needs of pregnant women, as well as those of both men and women as they relate to reproductive capacity, should be addressed in the forthcoming health and safety regulations.

Affirmative action

Article 23(3) of the Namibian Constitution authorises Parliament to enact legislation which provides for affirmative action.

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[30] Ministry of Health & Social Services, *Demographic and Health Survey 1992*, May 1993, pp 118-19

[31] Labour Act 6 of 1992, section 34

[32] Hazardous Substances Ordinance 14 of 1974

(1) *The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.*

(2) *Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the defence force and the prison service.*

(3) *In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.*

As described in detail in the chapter on Article 4 of CEDAW, the Ministry of Labour & Human Resource Development is in the process of carrying out consultations on a draft policy on affirmative action which will be backed up by legislation. This development is likely to have a crucial impact on women in the labour sector and will be assessed in future country reports.

ARTICLE 12

Health Care

12.1 HEALTH POLICY AND SYSTEMS

Prior to independence health care provision in Namibia was characterised by the following two features: the disproportionate provision of resources for the white population and the emphasis on curative medicine at the expense of preventative services. In addition, health services in rural areas were provided and managed from 1980 until independence in 1990 by 10 ethnic-based "representative authorities".[1] Thus, the pre-independence health system was curative in nature, highly fragmented and inequitable. Since independence the Government has been transforming the Namibian health system in order to make it compatible with new international objectives and goals.

To this effect the Government has committed itself to a number of goals, such as equitable distribution of resources as well as equity in terms of access to basic services by the under-privileged, impoverished and under-developed majority of the population. The Government has restructured the health system by unifying the various fragmented units under one central authority and has prioritised the establishment of a Primary Health Care (PHC) programme as a pillar of the restructuring process.

The Government's main objective in the delivery of health care is to "improve the health of the Namibian population through the provision of relevant preventive, promotive, curative and rehabilitative health services, which are affordable and accessible to all Namibians."[2] Additional principles guiding the formulation and implementation of health policy are equity and community participation. The Government is also committed to achieving the goal of "health for all Namibians by the year 2000" and specific targets have been set out to this effect.

The Namibian health system is pluralistic and is administered by both the public and private sectors. The public sector consists of nine directorates based at the Ministry of Health & Social Services headquarters in Windhoek. The ministry's management structure is further composed of four Regional Health Directorates and 13 regional Health Operations Offices - one office for each administrative region of the country. Health Co-ordinating Committees are to be established at the district level.

The ministry's expenditure as a percentage of GDP increased from 4.9% at independence in 1990/91 to 6% in 1992/93 in real terms. However, as a proportion of the total government expenditure, the ministry's expenditure decreased form 17.7% to 15.3% for the same period. Of the total health expenditure, the proportion of the ministry's community health services division increased from 46.4% to 49.8% for the same period.[3]

12.2 AVAILABILITY AND DISTRIBUTION OF FACILITIES

According to the Namibia Demographic and Health Survey of 1992 (NDHS),[4] there were 47 hospitals, 215 clinics, 60 PHC clinics and 19 health centres in Namibia. There is one hospital for every 17 000 people in the south and central regions, one for every 39 000 in the north-east, and one for every 71 000 in the north-west. While the number of hospitals has decreased since independence (due to the closure of "ethnic" hospitals), the number of clinics and health centres has been steadily increasing. Health centres are more common in the north-east, while PHC clinics are well-distributed throughout all regions. In relation to its population size the north-western region has very few health care facilities.

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[1] The Economic Intelligence Unit, *Country Profile: Namibia*, 1986, p.11.

[2] National Planning Commission (NPC), *Namibia's First National Development Plan (NDP1 - draft)*, 1995, p.230.

[3] *Ibid*, p.228.

[4] P. Katjiuanjo *et al*, *Namibia Demographic and Health Survey (NDHS) of 1992*, 1993, p.129.

TABLE 1: Number of health facilities, type of facility by region and population served

REGION	HOSPITALS	HEALTH CENTRES	CLINICS	PHC CLINICS	TOTAL POPULATION	POPULATION PER HOSPITAL
North-west	9	1	66	17	642 600	71 400
North-east	5	10	61	15	194 100	38 820
Central	10	2	32	11	169 251	16 925
South	23	6	56	17	383 940	16 693
TOTAL	47	19	215	60	138 891	29 572

NDHS of 1992, p.129.

Preliminary data from the NDHS also reveals the perception of women in terms of distance and time to the nearest health care facility. A PHC clinic is likely to be the closest facility (60% of women), followed by a hospital (30%), and a clinic or a health centre (9%). Hospitals are more prevalent in urban areas, where a hospital is the nearest facility for about 42% of females. In the central region hospitals are the nearest facility for about 52,6% of females, while in the north-east and north-west PHC clinics are nearest for above 60% of the female population.

On average women take about 40 minutes to travel to a health facility in Namibia. However, women in the north-west travel more than an hour to reach the nearest facility. At a distance of less than 10 kilometres, about 56% of women have access to antenatal care services, 48% to maternity services, 72% to immunisation services and 49% to family planning services. Within one hour of travelling time, about 75% of women have access to antenatal services, 82.3% to delivery services, 89% to immunisation services and 71% to family planning services.[5] In contrast to other services, delivery services and family planning are less frequently available to women at the nearest health facility.

TABLE 2: Female proximity to nearest health facility by residence and region

RESIDENCE/REGION	HOSPITAL	HEALTH CENTRE	PHC CLINIC	TOTAL %
RESIDENCE				
Urban	41.8%	9.2%	48.9%	100%
Rural	23.2%	9.4%	67.4%	100%
REGION				
North-west	25.0%	11.8%	63.2%	100%
North-east	18.1%	4.7%	77.1%	100%
Central	52.6%	1.2%	46.0%	100%
South	35.0%	11.8%	53.1%	100%
TOTAL	30.3%	9.3%	60.3%	100%

NDHS of 1992, p.130.

Utilisation of antenatal and delivery services is high in Namibia. The 1992 health survey established that around 90% of women had access to antenatal services, of whom 15% were attended to by a medical doctor; about 61% of pregnant women received at least one tetanus taxoid injection before giving birth; around two-thirds of babies were delivered in health facilities; and nurses or midwives are the most common source of delivery assistance, responsible for 54% of all births. Doctors and traditional birth attendants assisted in the delivery of 14% and 6% of births respectively.[6]

The distances women must travel to obtain particular services influences their inclination to use such services. In a 1994 survey of community perceptions, access to health services was identified as a common complaint. Respondents suggested that more health facilities should be located in their communities, and that existing facilities should be open for longer hours. More frequent visits by mobile health clinics were also recommended.[7]

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[5] *Ibid*, pp.136-139. Some women may not know that particular services are available at particular clinics. The survey's questions on access were based on the perceptions of the women interviewed.

[6] *Ibid*, p.13.

[7] NPC/SSD (UNAM), *Community Perceptions of Social Services in Namibia*, NPC Study No. 3, 1994, pp.(iv)13-14.

12.3 FERTILITY, INFANT AND CHILD MORTALITY RATES

According to the 1991 Population and Housing Census, the average number of children born alive per woman during her reproductive life (15-49 years) in Namibia is 6.1. The fertility rate is lower in urban areas (4.7) than in rural areas (6.8). There are substantial regional differences in fertility rates, ranging from 3.8 in Karas to 7.7 in Ohangwena. Generally there is a marked fall in fertility rates from north to south. The rate is high for women ever married (7.4) in contrast to women who have never married (4.7).[8]

Fertility falls with an increase in educational attainment. For example, the rate for women with no schooling is about 8.8 while for those who have completed Grade 12 it is 3.1. Own account workers (8.4) and unpaid family workers (7.3) have the highest rate of fertility whereas government employees (3.4) and employees in the private sector (5.7) have the lowest fertility.

The overall level of fertility in Namibia is one of the highest in the world. The reduction of the rate of population growth through lower fertility rates will be a major government policy focus in the next five years. In addition to the intensification of nationwide family-planning programmes, the Government is also planning a comprehensive information, education and communication strategy to highlight the lonks between population and development and to promote family planning.[9]

> *"Factors contributing to the high fertility profile of the majority of Namibian women include the generally low level of education, widespread poverty, early age of entry into sexual activity, the low level of survival among infants, and more importantly, the limited use of modern contraceptives among sexually active men and women."*
>
> *NDP1, Vol. I*, p.121

The infant mortality rate per 1 000 live births in Namibia is 67 and the proportion of children dying before the age of five is 87 per 1 000. The under-10 mortality rate for Namibia is 97 per 1 000. In urban areas, infant mortality is 55 and in rural areas 72 per 1 000. A similar pattern is discernible for under-5 and under-10 mortality rates in urban and rural areas. The rates are much lower for urban areas than for rural areas. Infant mortality rates are highest in Caprivi (106), Okavango (84) and Omaheke (78), whereas the rates for Erongo (51), Omusati (49) and Khomas (39) are the lowest. There is no visible north-south fall in infant mortality rates as is the case with fertility rates. For each type of mortality rate, the figures for urban areas are below the Namibian average.

There is a clear relationship between the marital status of mothers and infant mortality: for children born to single mothers the mortality rate is 55, with 73 for those born to legally or traditionally married mothers, and 78 for those children whose mothers are consensually married. Children of unmarried mothers have a lower infant mortality compared with those born to married mothers. These marked differences are presumably due to the large numbers of children born to married mothers and the resultant shorter length of birth intervals.[10]

At both the national and regional level there is a distinct fall in the rate of infant mortality with increasing educational attainment of mothers. At the national level, infant mortality for mothers with no schooling is 90, in contrast to only 18 for those who have completed Grade 12. Infant mortality is lowest for children with mothers employed by the Government (36) and the private sector (55), and highest for children born to mothers who are own account workers (82) and unpaid family workers (77). Infant mortality is about 31 for children born to students and about 65 for those born to mothers who are homemakers. This data indicates that a general improvement in the position of women will be likely to reduce the incidence of infant mortality.

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[8] Central Statistics Office (CSO): *1991 Population and Housing Census: Basic Analysis with Highlights*, 1995, pp 69-74

[9] *NDP1, Vol. I*, p 126-ff

[10] The NDHS of 1992 has established a clear relationship between the length of the preceding birth interval and infant mortality rates. Children born less than two years after the preceding birth have a higher infant mortality rate than those born two to three years after the preceding birth.

According to the Ministry of Health & Social Services Health Information System's cumulative data for the period January to December 1994 the following were main causes of deaths in paediatric wards: diarrhoeal disease (13.9%), malaria (13.7%), severe malnutrition (12.2%), diarrhoeal disease with blood (9.8%) and asthma/bronchitis (9%). Neo-natal tetanus was responsible for only 16 cases or 1.5% of the total deaths, while paediatric AIDS was responsible for 37 cases or 3.5% of all deaths. This pattern is repeated in the analysis of data for discharge diagnosis in paediatric wards for the same period - where diarrhoeal disease accounted for about 24.9% and malaria for about 27.2% of all cases.[11] The maternal mortality rate was estimated by the 1993 NDHS study at 225 per 100 000 live births.

Life expectancy at birth is 59.1 years for men and 62.8 years for women. In the Caprivi region life expectancy is lowest at 51.4 years for men and 54.8 for women, whereas in the Khomas region it is highest at 65.5 for men and 69.5 for women. Life expectancy for women in Khomas is therefore about 15 years higher than for women in Caprivi. According to the Health Information System's cumulative data for the period January to December 1994 the following were the main causes of death in adult wards: pulmonary tuberculosis (13.9%), circulatory system disease (9.4%), neoplasms (abnormal tissue growths such as tumours) (6.4%), acute respiratory infection (pneumonia, etc) (6.3%), malaria (5.8%) and hypertension (high blood pressure) (4.7%).

AIDS is an increasingly a major health problem in Namibia. In 1986 there were only four recorded cases of HIV infection, and in 1990 this figure rose to about 543, then to about 1 261 in 1991,[12] and for the first five months of 1994 a cumulative figure of about 8 014 HIV cases are recorded.[13] Contrary to the situation in many other developing countries, there are more men (54.5%) than women (45.5%) infected with HIV/AIDS. The majority of HIV/AIDS cases (86.3%) are clustered in the 15-44 age group - the most economically productive age group of the labour force. Only about 7.8% of all HIV/AIDS cases involve children under 15 years old. Almost half of all women infected (48%) are in the age group 25-34 and almost one-third (27.8%) are in the 15-24 group. Only about 13.4% and 2.3% of all female HIV/AIDS cases are in the 35-44 and 45+ age groups respectively.[14] This age distribution means that there is a heightened chancee of HIV transmission through pregnancy or breastfeeding.

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[11] Ministry of Health & Social Services, *Health Information System* (unpublished data), 1995.

[12] Republic of Namibia, *A Commitment to Our Children: Namibia's Country Report Under the UN Convention on the Rights of the Child*, 1992, p.53.

[13] CSO, *Women and Men in Namibia*, August 1995, p.73.

[14] *Ibid.*

12.4 TEENAGE PREGNANCIES AND FAMILY PLANNING

The 1992 health survey produced data concerning the age of childbearing women, and hence established the teenage pregnancy rate. The survey found that about 36% of teenagers aged 18 years and 19% of those aged 17 years are either pregnant or have already given birth to a child. The figure for females aged 19 years is 45.4%, which is almost half the total number of females in this age group. Teenage pregnancy/motherhood is more common in urban areas (24.1%) than in rural areas (20.4%). There is also a positive association between childbearing and educational levels of teenagers. Early childbearing is the highest among teenagers with very little education or no schooling at all, and is more common in the north-east (35.3%), south (28.8%) and central (27%) regions. Only 12% of teenagers in the north-west had either fallen pregnant or given birth.[15] The introduction of family life education at the various health facilities and schools should help to reduce teenage pregnancies.[16]

About 90% of women have knowledge of a contraceptive method and the most widely known methods are the injection, the pill, condoms and female sterilisation. About 41% of all women and almost 52% of married women have ever used a contraceptive method, and only 23.3% of all women and 28.9% of married women are currently using a contraceptive method. Only about 2% of all women and about 3% of those currently married are using a traditional method.[17]

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[15] *NDHS of 1992* (fn 4), p 27

[16] See also the discussion on Article 10 of Cedaw dealing with education and the causes of school drop-out

[17] *NDHS of 1992*, pp 30-33

Contraceptive use is higher in urban areas than in rural areas. About 52% of married women in the south, 32% in the central, 22% in the north-east and 9% in the north-west use a contraceptive method. Contraceptive use is also higher among educated women. At 48% for women with better education, contraceptive use is three times higher than for those with no education at all. Around 24% of currently married women have an unmet need for family planning services,[18] indicating that access to such services is still in need of improvement.

12.5 ABORTION

Abortion is regulated in Namibia by the Abortion and Sterilisation Act, a South African statute which was made applicable to Namibia prior to Namibia's independence. In terms of this statute, abortion is illegal except in certain narrowly-defined situations.

Abortions may be allowed:

a) if continuing the pregnancy will endanger the woman's life, or pose a serious threat to her physical health;
b) if continuing the pregnancy will pose a serious threat of permanent damage to the woman's mental health;
c) if there is a serious risk that the child will suffer from a mental or physical defect that will make the child seriously and irreparably handicapped;
d) if the pregnancy is the result of unlawful sexual intercourse, in the form of rape, incest or intercourse with a woman who has a severe mental disorder.

The statute sets forth specific procedures which must be followed to obtain permission for an abortion in these instances. Generally, certificates must be obtained from two doctors. If the woman's mental health is in question, one of these doctors must be a psychiatrist. If unlawful sexual intercourse is involved, one of the doctors must be a district surgeon and the woman must also obtain a certificate from a magistrate. No conviction is necessary to obtain consent for an abortion in the case of rape or any other form of unlawful sexual intercourse - but if no charge has been laid with the police, the applicant must show a good reason for this. The woman must also be able to locate a doctor who is willing to perform the abortion, who cannot be one of the two doctors who provided certificates authorising the procedure.[19]

The complicated procedure for obtaining permission for a legal abortion has the result that legal abortion is in practice readily available only to educated, privileged women, thus perpetuating race and class discrimination. Rural women without easy access to multiple doctors or a psychiatrist are particularly disadvantaged by the existing procedural requirements. Furthermore, some Namibian women object to the fact that abortion decisions even in these limited circumstances are primarily in the hands of medical and legal professionals, most of whom are male.

The Ministry of Health & Social Services proposed amendments to the Abortion and Sterilisation Act in 1992. These amendments were administrative in nature and would not have broadened the grounds for obtaining a legal abortion. The proposed amendments were tabled at the request of various women's organisations, to allow time for more discussion of the overarching question of abortion.

The majority of legal abortions are performed in the first three months of pregnancy. The most common basis for legal abortion under the existing law is the mental health of the woman - probably because this test lends itself to more flexible interpretation. The second most common ground is danger to the physical health of the foetus, commonly arising from the inadvertent use of drugs which may be harmful to the foetus's development. The third most common ground is danger to the woman's physical health, such as risks from high blood pressure or kidney problems. The other grounds - rape, incest or unlawful sexual intercourse with an imbecile - are seldom used as the basis for legal abortion because they are difficult to prove, and because the process of obtaining permission on these grounds takes too long. As a result, where a pregnancy results from an alleged rape, the actual basis for the abortion may be the mental state of the woman.

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[18] *NDHS of 1992: Summary Report*, pp 9-10.

[19] Abortion and Sterilisation Act, No. 2 of 1975.

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The records also indicate that legal abortions are frequently sought where the pregnancy resulted from failed contraception, or even from a failed sterilisation, thus suggesting that abortion is *not* being misused as a substitute for family planning.

At present, only two medical facilities in Namibia meet the criteria set forth in the law for performing abortions - Windhoek State Hospital and Oshakati State Hospital. However, virtually all legal abortions which are carried out in Namibia take place at Windhoek State Hospital. Some doctors believe that the existing procedures are accessible primarily to educated women, and that legal abortions tend to be requested mostly by Windhoek residents because they have easier access to the necessary facilities.

Reliance on danger to mental health as a basis for abortion is somewhat limited by the fact that there is at present only one psychiatrist in Namibia, based at Windhoek State Hospital.[20]

There is little reliable information on the incidence of illegal abortion in Namibia. However, press reports indicate that Namibian women are being prosecuted for attempting to abort themselves, and that deaths from illegal abortion are occurring in Namibia. In addition, there are a significant number of cases of infanticide; nationwide, the police recorded 21 such cases in 1992 and 34 cases in 1993.[21]

The incidence of illegal abortion and infanticide may be linked to the high rate of teenage pregnancy in Namibia. For example, it has been estimated that 1 in 10 Namibian woman between the ages of 15 and 19 gives birth each year, meaning that as many as 50% of all Namibian women have a child while they are still in their teens.[22] The discussion of sexual matters in general is still taboo in many Namibian communities - meaning that many Namibian girls and women do not have easy access to accurate information about family planning and knowledge of their own body.

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[20] Information on existing practices from interviews with doctors employed by the Ministry of Health & Social Services.

[21] Information from Nampol, 9 February 1993. See also, for example, *Windhoek Observer*, 2 March 1991; *The Namibian*, 7, 8, 10 and 15 September 1993; *The Namibian*, 17 March 1994; *The Namibian*, 12 April 1994; *The Namibian*, 9 May 1993 (see pp 23-24 of this report).

[22] *The Namibian*, 11 July 1995, quoting UNFPA, the *State of the World Population Report*.

THE TRAGEDY OF ILLEGAL ABORTION IN NAMIBIA

A police investigation was launched after a 32-year-old nurse from Tsumeb died from a "backstreet abortion" in which a local shopkeeper injected an unknown substance into her womb. (*Sister*, October-November 1993)

Police investigated a case of abortion after a foetus approximately four months of age was found in Oshakati. (*The Namibian*, 28 July 1993)

Police investigated a case of abortion after a 16-year-old girl drank an "unknown medicine to commit abortion" at Omuulukila village. (*The Namibian*, 15 June 1993)

Police investigated a case of abortion after the discovery of a 13-14 week old foetus in a blocked sewer in Windhoek. (*New Era*, 3-9 June 1993)

A woman in Oshakati was reportedly given a sentence of eight months' imprisonment, four months suspended, for inducing an abortion in herself. (*Die Allgemeine Zeitung*, 3 March 1993)

Two women were charged with culpable homicide after giving the daughter of one of them a mixture to drink which was intended to induce abortion but killed the pregnant woman instead. (Information from Prosecutor-General's Office, 1994)

According to a 1993 study of teenagers aged 13-19, many school girls who become pregnant try to abort, and a few girls have died from illegal abortions. Some of the methods cited for inducing miscarriage were drinking bleach or taking certain over-the-counter medications. Attitudes towards abortion among the group studied were mixed, ranging from those who felt that abortion constitutes murder to those who were in favour of legalising abortion to prevent women from dying in backstreet abortions.[23] Similar findings were reported in a 1994 study of the Okavango region and a 1995 report on teenage pregnancy in selected areas of Namibia.[24]

"Abortion must be legalised because backstreet abortion is going on and people are dying because of that."

"If abortion is legalised young people will misuse it, for example, they know if they sleep around they can go to the hospital to abort. They are not going to take care of themselves."

Comments from Namibian teenagers from P. Hailonga,
A Study to Identify Adolescents' Knowledge, Attitudes and Beliefs towards Teenage Pregnancy,
Windhoek, March 1993, pp.23-24.

"Abortion is killing. It is better to have the child and give it for adoption." (Female learner, Khomasdal)

"I think abortion should be legalised so that women don't need to resort to backstreet abortions anymore." (Male teacher, Gibeon)

Comments recorded in H. Becker *et al*, *Teenage Pregnancy and the Right to Education*,
CASS, November 1995, p.79

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[23] P. Hailonga, *A Study to Identify Adolescents' Knowledge, Attitudes and Beliefs Towards Teenage Pregnancy*, Windhoek, March 1993, pp 23-24.

[24] See H. Becker *et al*, *Teenage Pregnancy and the Right to Education*, CASS, Windhoek, November 1995, pp. 7, 48 and 79; H. Voeten, *Teenage Pregnancy: Problems, Causes and Policy Recommendations*, Utrecht University, 1994.

There are signs that public debate on abortion in Namibia is intensifying. For example, there were small public pro-life and pro-choice demonstrations in Windhoek in 1994 and 1995. The abortion issue also featured prominently around this time in the Namibian media.[28]

More discussion around this issue is needed. The reticence of many communities to talk about this issue openly has sometimes been mirrored by a similar reticence to address the topic in official documents. For example, Namibia's National Report to the 4th World Conference on Women makes no mention of abortion, and the Central Statistics Office omitted abortion statistics from a recent gender booklet which included a chapter on health issues, despite the availability of such data and suggestions from a few NGOs that these statistics should be included. The Department of Women Affairs believes that more widespread public debate on abortion is necessary to guide government policy and law reform in this area.

12.6 MEASURES TAKEN TO IMPROVE HEALTH CARE

The Ministry of Health & Social Services has identified the following immediate objectives for the period 1995-2000:

1. To increase life expectancy to 70 years of age.
2. To reduce the infant mortality rate to 40 per 1 000.
3. To reduce the under-5 mortality rate to 42 per 1 000.
4. To reduce the maternal mortality rate to 112 per 100 000.
5. To reduce the total fertility rate (TFR) to 4.5 per female.
6. To improve health and quality of life by promoting environmental health.
7. To improve the availability and consumption of and access to essential drugs and supplies.

Among others, the following strategies and programmes have been launched or are envisaged:

Primary Health Care (PHC) Directorate and Family and Community Health Unit

In line with its stated objectives of making the health care sector accessible and responsive to the needs of the population, the Ministry of Health & Social Services established a PHC Directorate to co-ordinate a number of activities and initiatives in this field. A Family and Community Health Unit is housed within this directorate and has been tasked to plan, implement and monitor PHC programmes. A PHC programme was launched in February 1991. A number of the iniatives and programmes launched within the context of the PHC will be listed below. It is necessary to carry out an assessment of their impact on the target population and especially women. However, no comprehensive studies have been carried out which will allow us to do this and hence this should enjoy immediate attention in the coming months. Applicable information in this respect will nevertheless be sourced from a report entitled *Community Perceptions of Social Services of 1994*, which surveyed rural communities' attitudes towards service provision since independence in various selected regions.

Survival, Protection and Development of Children Plan of Action

The President was a signatory to this plan of action at a world summit in New York in September 1990. On the basis of this plan the Namibian Government has adopted a National Programme of Action for Children of Namibia (NPA). The NPA lays emphasis on child protection in terms of a broad range of issues, such as water and sanitation, food security and nutrition, education and women in development.

Control of Diarrhoeal Diseases and Acute Respiratory Infections

The diarrhoeal diseases control initiative is meant to reduce the incidence of mortality and morbidity from diarrhoeal debilitation in infants and children. Emphasis is placed on correct management of diarrhoeal cases. The NDHS of 1992 has recorded that about one in every five children had diarrhoea in the two weeks preceding the survey. Although about two-thirds of these children were taken to a health facility, those whose mothers reside 30km away from a health facility are the least likely to be taken there for treatment.[26] According to the 1994 report on community perceptions, the treatment of children with diarrhoea has improved dramatically in all regions.

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[28] A participant estimated that there were approximately 30 people involved in each of the competing demonstrations which took place on 5 March 1994. See *The Namibian*, 7 March 1994. See also "The Great Abortion Controversy", *The Namibian*, 11 March 1994. Abortion was previously the focus of a controversial television programme which featured three white panelists (one of whom was an American) and explicit footage of the dismemberment of foetuses at an advanced stage of development. *Talking Point*, Namibia Broadcasting Corporation, 20 July 1993.

Acute respiratory infections (ARI) are a leading cause of morbidity and mortality in children under the age of five. About 18% of children under five were ill with a cough and rapid breathing - both ARI symptoms - in the two weeks preceding the NDHS survey in 1992.[27] Marked regional differences were observed, ranging from 39% in the north-east and 3% in the central region. The ARI initiative focuses on the correct management of ARI to reduce the under-five morbidity mortality levels and promote the health of the child.

Maternal and Child Health / Family Planning Programme

Services provided under this programme are aimed at addressing the health problems of children under the age of five and women of childbearing age. The Safe Motherhood and Family Planning programmes launched in November 1991 are sub-programmes of this programme. Concerning the provision of maternal health and family planning services, it seems that the impact of these two programmes has not been uniform across all regions. Overall, positive to neutral ratings have been recorded concerning these two issues, meaning that some regions have registered improvements whereas others have not.[28]

Expanded Programme on Immunisation

This programme was launched by the President in June 1990 with the aim of achieving universal child immunisation in Namibia. About 70% of all children were fully immunised in 1991 and a target of 90% has been set for the year 2000. According to the NDHS, vaccination coverage has increased tremendously since independence. For example, among the 12-23 months old children, 91% have been vaccinated with BCG and 92% received at least a dose of DPT and polio vaccines. About 76% of these children have also received a measles vaccination. The immunisation of children is also highly appreciated by rural communities in all the surveyed regions. This perception suggests that the immunisation programme has been succesfully introduced since independence.

School and Adolescent Health

This inter-sectoral initiative aims to provide preventative and promotive health services to pre-primary and primary schools. This programme concentrates on screening pupils for diseases, immunisation and early detection of abnormalities. There is a need to evaluate the impact of this programme on the targeted communities.

The Mother-Baby Friendly Initiative

This programme is part of a global movement to promote breastfeeding. Namibia has been particularly successful in introducing international standards, with 17 out of 36 facilities now certified as Baby and Mother Friendly - the highest level of achievement in Africa. The Ministry of Health & Social Services is in the process of drafting a Promotion of Breastfeeding Act to encourage mothers to breastfeed their babies and to regulate the advertising and distribution of commercial breastmilk substitutes which abound on the market.[29]

12.7 CONCLUSION

Besides the programmes that the Ministry of Health and Social Services is carrying out, DWA launched a Gender Population and Development project with the aim to raise, popularize and promote the importance of gender issues in population dynamics and its relatioship to sustainable development. Accordingly this project focusses upon the need to further develop and strengthen more gender aware sectoral policies and programmes.

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[26] *NDHS 1992 (Summary Report)*, p 14

[27] *NDHS of 1992*, p 104

[28] *NDHS 1992 (Summary Report)*, p 14

[29] See also the discussion on "Breastfeeding and working mothers" in section 11.7 of the chapter on Labour Development - Article 11 of CEDAW

(including population and public health and legal reform and employment policies and programmes). The project comprised of mainly three different components namely:

- 1. institutional and capacity building these areas for agencies involved in the project implementation process.

2. NGO component, whereby the capacity of Women and Health Network is strengthened to deal competently with issues around women and health and reproductive health in particular.

3. Research Component, which is conducted by the Social Sciences Division/UNAM as a sub-contract to investigate intra-household relationships as far as decision making is concerned in the area of initiation rites practices.

It is clear that the Ministry of Health & Social Services has succeeded in reorienting the health care sector in Namibia by shifting the emphasis from curative to preventative care. To this effect several programmes under the co-ordination of the PHC Directorate have been launched since independence. Although it is still early to make a judgement about the impact of these programmes on the targeted communities, it has been useful to note the range of perceptions of rural communities concerning the change in the delivery of health care since independence. The immunisation programme and diarrhoeal treatment of children have received positive ratings from these communities. However, the Government has noted the suggestion from most communities that there is still a need for greater access to health facilities and services. The provision of maternal and family planning services in particular needs to be revisited, especially in those regions where communities reported no noticible change taking place since independence.

ARTICLE 13

Economic and Social Life

13.1 FAMILY BENEFITS

Some family benefits paid by the Government still embody a degree of sex discrimination. However, an even more pressing problem is the elimination of all remaining racial discrimination inherited from the South African regime at independence.

Pensions

Old age pensions paid by the state are an important income support for poor households in Namibia. Both sex and race discrimination were removed from the pension scheme shortly after independence.

When Namibia became independent in 1990, men were entitled to a pension at age 65 and women at age 60. However, since October 1990, all Namibians have been entitled to an old age pension at age 60.

Prior to independence, pension levels were determined by ethnic criteria in terms of a Social Pensions Act inherited from South Africa. Pension amounts ranged from a high of R382 per month for whites to a low of R55 per month for blacks in the Owambo, Kavango and Caprivi regions. Initially there was an attempt to redress these imbalances by maintaining the highest pensions at the pre-independence rates, while progressively increasing the lower amounts.[1] However, all pension payments were subsequently equalised at N$120 per month, an amount which was later raised to N$135 per month.

Since October 1994 old age pensions have been regulated by a new law - the National Pensions Act. In terms of this legislation, pensions are available to citizens and permanent residents aged 60 or older. The Ministry of Health & Social Services is empowered to require that permanent residents are eligible for national pensions only after they have been continuously resident for a set period.[2]

The possibility of introducing a means test is under discussion. The existing act authorises the use of such a mechanism which would make it possible to utilise existing resources more effectively. If a means test is applied in future, it might be useful to examine its practical effect on women and men.

Maternity Leave, Sick Leave and Death Benefit Fund

As discussed in the chapter on Article 11 of CEDAW, Namibia's recently-enacted Social Security Act has established a Maternity Leave, Sick Leave and Death Benefit Fund which only recently became operational. In addition to the maternity benefits discussed in the previous chapter, the fund will also provide for sickness benefits to male and female employees who have exhausted the sick leave provided for in terms of the Labour Act. These benefits are payable at the rate of 60% of the employee's usual wage for the first six months and 50% of the usual

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[1] See UNICEF/NISER, *Situation Analysis of Children and Women in Namibia*, March 1991, pp 110-11

[2] National Pensions Act 10 of 1992, which came into force on 1 October 1994

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wage for the next six months, up to a maximum of two years. As in the case of maternity benefits, this payment is based on a maximum income of N$3 000 per month. A lump sum payment of N$2 000 is payable on the death, retirement or permanent disability of a male or female employee.[3]
The Social Security Act also proposes the establishment of a National Medical Benefit Fund and a National Pension Fund, but these portions of the legislation have not yet come into force.

All of the benefits proposed in terms of the Social Security Act are available to men and women on identical terms, and membership of the funds in question is compulsory for all employees. However, as noted above in the chapter on labour, employees who do not work for the same employer for more than two days each week have been excluded from coverage due to concern about difficulties of enforcement. The combination of maternity benefits with other benefits which are available to both men and women should help to ensure that women are not prejudiced in the labour market. It will be important to assess the operation of the various funds in practice once they are well-established.

Maintenance grants

A limited amount of financial assistance is available to families in need under the Children's Act.[4] However, the criteria for obtaining financial assistance and the grant amounts are still governed by racially-based regulations inherited from South Africa, and the grant criteria embody sex discrimination - against men rather than against women.

In respect of all race groups other than whites, state maintenance grants are targeted at single mothers, including unmarried mothers, widows, and women whose husbands are imprisoned or disabled. In the case of whites, this system was replaced in 1988 by a "family allowance" based on a more even-handed approach: unlike the grants available to the other race groups, this family allowance can be paid to a husband and wife who are caring for a child born to one or both of them, or to a father or mother who is functioning as a single parent.

Grants are paid on a sliding scale according to the family's income, and the cut-off incomes vary for the different "race groups", ranging from a low of N$650 per year for a Nama family to a high of N$11 136 per year for a Baster family or a white family with four children. Families who earn more than the maximum income are not eligible for financial assistance. Grants are also payable in respect of different numbers of children with respect to different race groups: blacks, Basters, Namas and whites can obtain grants for a maximum of four children; Hereros for a maximum of six children, and "coloureds" for a maximum of 10 children.[5]

TABLE 1: State maintenance grant recipients (1992-1994)

RACE GROUP	MARCH 1992	MARCH 1993	AUGUST 1994
Coloureds	582	573	440
Basters	503	561	606
Namas	212	199	532
Blacks	915	1 244	927
Whites	20	79	9
Race unknown	0	0	74
TOTAL	2 232	2 656	2 588

Ministry of Health & Social Services

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[3] Social Security Act 34 of 1944, Part V, *Government Notice 198* of 1 November 1995.

[4] Children's Act 33 of 1960.

[5] Information provided by the Ministry of Health & Social Services, 1994.

Participants at a Children's Act Workshop convened by the Ministry of Health & Social Services in July 1994 recommended that the racial distinctions in the grant system should be eliminated as a matter of urgency. They also recommended that grants should be aimed at households with the lowest household income, regardless of family composition, and that the criteria for grants should treat mothers and fathers equally in all respects.

A draft law and regulations which would give effect to these recommendations have been prepared at the request of the Ministry of Health & Social Services by the Legal Assistance Centre and the Human Rights and Documentation Centre of the Law Department at the University of Namibia. At the time of writing (December 1995), these drafts are still under discussion.

13.2 FINANCIAL CREDIT

As the National Development Plan notes, the financial sector in Namibia is small and dualistic: "As is the case in many developing countries, there is on the one hand a well-developed financial system, mainly serving the urban centres, while on the other hand large portions of the rural areas are left with little or no access to financial services."[6] The distribution of credit institutions is clearly a major obstacle to credit for rural women.

Formal sources of credit include five commercial banks, two building societies, several parastatals (the Namibian Development Corporation, the National Housing Enterprise and the Agricultural Bank of Namibia), the Build Together Programme administered by the Ministry of Regional & Local Government and Housing, NGOs and a number of credit unions and rural savings schemes. The DWA, while not a source of credit *per se*, provides financial support to a few specific income-generating projects owned and managed by women.

There is no discrimination against women by commercial financial institutions as such. All customers are treated equally. No statistics are kept that distinguish between customers on the grounds of sex. In the experience of financial institutions, women have a better repayment record on home loans (mortgages) than men. There are no programmes directed specifically at women. Commercial institutions such as banks do not have any significant programmes or activities in the field of micro-economic enterprise development.

In contrast, some other sources of financial credit have had a measurable impact on women. For example, the Build Together Programme has been particularly successful in reaching women as recipients of credit. This initiative provides loans of N$1 000 to N$22 500 for the construction of new houses, the purchase of plots, the upgrading and extension of old houses and the servicing of sites. It began in the 1992/93 financial year and reached 3 379 families in its first three years of operation. The average loan amount is N$12 600. In the 1992/93 financial year, 45% of the beneficiaries of the programme were households headed by women, rising to 47% in 1993/94. This degree of participation by women is remarkable in comparison with that of housing programmes in other developing countries. It should also be noted that the programme has evidenced a loan recovery rate of about 80%. The Build Together programme plans to encourage more women to participate. It is also encouraging women to form savings and credit societies to serve their other credit needs. For example, the programme has already assisted 22 women to form a private savings scheme known as People's Square. These women have all completed work on their houses with loans of N$7 000 each, and a 100% record of loan repayments.[7]

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[6] Draft National Development Plan 1, p.183.

[7] Draft National Development Plan 1, pp. 248, 251, 255.

The experience of NGOs involved with extending credit to women is similar. For example, the Co-operative Support and Development Agency Trust (COSEDA), which provides loans averaging US$200 to small-scale entrepreneurs, reports that 85-90% of its loan recipients are women and that there have been no defaults since the programme began in March 1995. This credit scheme supports projects such as informal trading, informal selling of food and the provision of services by tailors. COSEDA's view on the high level of participation by women in its programme is that women are more entrepreneurial than men - or are forced to be more entrepreneurial, as many of the loan recipients are single mothers.

Other NGOs which have granted small-scale loans to women in the informal sector include the Rössing Foundation and the Private Sector Foundation, while groups such as the Rural People's Institute for Social Empowerment (RISE) and the Namibia Credit Union League have given support to local groups who wish to organise group savings schemes. It has been estimated that almost 75% of the members of Namibian savings and credit unions are women.[8]

A serious disability facing Namibian women in respect of credit is the marital power of the husband. In terms of the common law inherited from South Africa at independence, married women who are subject to the marital power - which applies to all civil marriages unless it has been specifically excluded by antenuptial contract - require the consent of their husbands in order to enter into a loan agreement. However, legislation which will abolish marital power is before Parliament at the time of writing. (The proposed legislation is discussed in more detail under CEDAW Article 15.)

Another barrier to the availability of credit to women is the lack of gender sensitivity on the part of many formal lending institutions. For example, commercial banks and parastatals could make more efforts to reach out to women as clients, and to keep gender-disaggregated statistics. Such steps will be particularly important once marital power is abolished, in order to understand the practical impact of this legal reform.

There are also signs that women may need more information about savings institutions. A survey of one rural district found that female-headed households are less likely to save than male-headed households, that the amounts saved by women tend to be smaller than those saved by men (an average of N$227/year for women compared to an average of N$966/year for men), and that women are more likely to keep their money at home while men tend to hold their savings in banks.[9] This may indicate the need for a public education campaign on financial options targeted at women. One problem is the access to savings institutions and no mobile banks that run in the rural areas.

13.3 SPORT

Sport in Namibia is still in a young and at a developing stage. At present, sports activities are concentrated in urban areas due to the limited availability of facilities and facilitators. Despite the fact that the Ministry of Youth & Sport is headed by one of Namibia's few female ministers, the participation of men and women in sport at school and national levels remains uneven.

Eleven different sports are available at government schools. Four of these - cricket, rugby, soccer and boxing - are available only to boys. One of the 11 - netball - is available only to girls. The remaining six - athletics, hockey, swimming, chess, tennis and volleyball - are available to both boys and girls. While differences in interest among school pupils may have some bearing on this division, these preferences are shaped to some extent by sexual stereotypes about which sports are "suitable" for boys and girls.

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[8] Republic of Namibia, *Namibia National Report to the 4th World Conference on Women*, November 1994, p.49

[9] *Ibid*, p.37

At a national level, sports other than netball are dominated by men, as illustrated by Table 2 below.

Looking at a more detailed breakdown of all the sports activities in which women participate, we see that men dominate most of the sports in which women are active - with the exceptions of netball, softball and field hockey.

TABLE 2: Predominant sport code by sex

SPORT CODE	SEX COMPOSITION					
	Male		Female		Total	
	#	%	#	%	$	%
Athletics	350	82	76	18	426	100
Golf	1 950	93	155	7	2 105	100
Cricket	390	100	0	0	390	100
Football	740	100	0	0	740	100
Netball	0	0	5 240	100	5 240	100
Rugby	1 522	100	0	0	1 522	100
Tennis	546	60	370	40	916	100
TOTAL	5 498	48	5 841	52	11 339	100

Annual Report of the Namibian National Sports Council (1994)

TABLE 3: Predominant sport code by sex

SPORT CODE	SEX COMPOSITION					
	Male		Female		Total	
	#	%	#	%	$	%
Bowling	330	73	123	27	453	100
Hockey	167	48	184	52	351	100
Handball	230	72	90	28	320	100
Netball	0	0	5 240	100	5 240	100
Softball	23	8	280	92	303	100
Volleyball	190	59	130	41	320	100
Waterskiing	120	53	105	47	225	100
TOTAL	1 060	15	6 152	85	7 212	100

Annual Report of the Namibian National Sports Council (1994)

Furthermore, as Table 4 shows, women who participate in sport do not exhibit very much diversity. Most women who participate in national sport participate in netball (85%), while the national sports activities of men show a much greater variety.

TABLE 4: Predominant sport code for women only

SPORT CODE	# FEMALES	% FEMALES
Bowling	123	2
Hockey	184	3
Handball	90	1
Netball	5 240	85
Softball	280	5
Volleyball	130	2
Waterskiing	105	2
TOTAL	6 152	100

Annual Report of the Namibian National Sports Council (1994)

The Namibian National Sports Council of 1993/94 consisted of nine men and only two women, and all of the officers were men. Other sports bodies in Namibia - such as the Namibian Schools Sports Union, the Namibia Football Association and other bodies concerned with individual sports - are even more thoroughly dominated by men, except for the All Namibian Netball Association which is dominated by women.

The Government has experienced difficulty in obtaining sponsorship for "women's sports" such as netball, to enable women to participate in international competition. For example, netball has in past years secured sponsorship from only one company and thus holds only one annual tournament, whereas many "men's sports" have multiple sponsors which provide sufficient funds for more frequent events. Sponsors claim that "women's sports" do not generate as much public interest as the sports dominated by men.

Similar attitudes are responsible for the fact that the most highly-trained coaches are more likely to be found in "men's sports" than in the "women's sport" of netball.

Nevertheless, the current situation is a great improvement over the past. Girls at schools are encouraged to take part in sport, and at the national level women are free to participate in any sport they wish. Efforts are also underway to develop netball further by establishing regional teams, and by obtaining more sponsorship. In November 1994 the Namibia National Netball Team travelled to Zimbabwe to participate in the COSANA competition, and in July 1995 it went to England for the 9th World Championship. Thus, there are efforts to give more attention to the sports which interest girls and women.[10]

Furthermore, as noted above in the chapter on Article 4 of CEDAW, the recently-enacted Namibia Sports Act requires that at least three of the 14 members of the National Sports Commission be women and specifies that the Sports Development Fund established for the promotion of sports in Namibia must be used "to enhance the sports of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices."[11] The impact of this policy on women's participation in school sport and national teams should be assessed in future.

13.4 CULTURAL LIFE[12]

Background

Being home to at least 10 major indigenous groups and thousands of immigrants of various nationalities, Namibia's cultural heritage is rich and varied. In colonial South West Africa, the cultural activities of different groups were generally carried out in isolation from the wider community, but since independence there has been more emphasis on the building of a "national culture". Today, although many cultural barriers have been broken down, historical distinctions persist; while some believe that the goal of a "national culture" is attainable, others feel that ethnic differences should be preserved within the context of a "shared cultural heritage" fostered through education and knowledge about the cultural heritage of Namibia's different peoples.

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[10] Information based on interviews with officials of the Ministry of Youth & Sport, and with male and female members of national teams.

[11] Namibia Sports Act 7 of 1995.

[12] All the information for this section was obtained in interviews with the Director of Culture in the Ministry of Basic Education & Culture, the Curator of the Arts Association of Namibia, a senior lecturer in the Department of Visual and Performing Arts of the University of Namibia, and other authorities on cultural life in Namibia.

> ***Before independence, culture was used to pursue a policy of divide and rule along racial and ethnic lines. National unity was a threat to the colonial administration. This fragmented system is not easy to change. For a young nation like Namibia, cultural promotion and development plays an important role in strengthening national unity and identity, as well as promoting recreational and leisure opportunities.***
>
> *National Development Plan 1, 1995/1996-1999/2000*, Vol II, P.260.
>
> The National Development Plan goes on to cite as its main objective "unity through diversity." Among the programmes designed to meet this objective will be the promotion of regional cultural heritage and expression, through festivals, exhibitions and competitions, and the production of audio-visual materials and journals. Activities such as these should help to make various kinds of art more accessible to women throughout the country.

The ongoing debate around the distinction between "art" and "craft" has particular implications for Namibian women. The designation "craft" is sometimes seen as discriminatory because it undermines traditional art forms by treating them as less valuable than "art". This debate has inspired traditional artists to increase their creativity and range of skills, since suitable financial and other rewards for painstaking effort are not guaranteed if the objects they produce are designated as "crafts". Some have broken with tradition to produce objects which are not merely functional, as in the past, but which can also be seen as "art for art's sake".

Women of European descent have excelled in the visual, performing and literary arts due to their educational advantages and the Western-based arts curricula of yesteryear, and although they are still more prominent than black women in these arts, a few black women are starting to make an impression on a national scale. Since independence, new talent has been emerging in all the arts, with many women of all cultural backgrounds at the fore, and public enthusiasm, support and encouragement is strong. There does not appear to be discrimination against women in any field of the arts.

Until recently, women have tended to be involved in the arts on a managerial but not participatory level. Now, women constitute the majority of art students, while the affirmative action policy of the Ministry of Basic Education and Culture has helped to keep women in managerial positions. Several top management posts are occupied by women, such as the ministry's Director of Culture and the Curator of the Arts Association of Namibia. While management at museums and monuments in Namibia still tends to be male-dominated, arts education committees, the National Archives and public libraries are predominantly managed by women.

Formal Education

Currently, more women than men are enrolled in formal arts courses at institutions offering arts tuition, although this may unfortunately be due to a perception of art as a marginal field of endeavour.[13]

The 1994 intake for the College of the Arts was 70% to 30% in favour of women. The college is subsidised by the Ministry of Basic Education & Culture, and offers tuition at a very low cost. The University of Namibia has a more balanced gender enrolment in its Departments of Visual and Performing Arts, but women still constitute the majority of students in these departments.

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[13] See also the chapters dealing with Articles 5 and 10 of CEDAW on Education and Sex Role Stereotyping, respectively.

Informal training and entrepreneurship

In the informal sector, artists whose work was once relegated to the realm of "crafts" are now being trained and promoted through a joint nationwide effort on the part of government, educational institutions, NGOs, grassroots organisations, entrepreneurs and other concerned individuals such as established artists. This effort has resulted in the founding of Art Centres, co-operatives and other profit-making and non-profit projects countrywide. One authority consulted for this report felt that women's projects are dominated by "white women" and do not really empower other participants. Nevertheless, many are earning a living from their work, receiving training and learning the management ropes.

Among art co-operatives there is still some gender bias based on traditional divisions of labour, for example, wood-carving co-operatives are male-dominated. However, art projects and co-operatives in the Caprivi and Otjozondjupa (former Bushmanland) traditionally have a balanced gender ratio.

Namibia's traditional art is now being exported thanks to entreprenurial initiatives. Markets have been established particularly in Europe, and agents assist the artists to balance supply with demand. Two such projects are located in Hoachanas in the south and Otjiwarongo in the north, which together provide an income for around 500 women producing embroidered and appliqued linen sold to European markets. The products are of a very high quality, and the older women pass on their skills to the younger.

The Rossing Foundation in Windhoek - an informal educational institution - has equipped hundreds of women with tailoring, embroidery and other needlework skills to use to generate an income, and the Foundation is very involved with cultural projects in the regions.

Visual and performing arts

The Arts Association devotes much of its resources to promoting women in the visual arts. The Association has played a leading role in diversifying gallery art to include traditional art forms like basketry, pottery, needlework, leatherwork and beadwork. This exposure has dramatically enhanced the role of women as artists, as well as their income-generating opportunities. Although galleries are mostly managed by women, these are still all women of European background, due mainly to the Eurocentric bias of art education in the past.

The Arts Association collaborates with other institutions and individuals to facilitate workshops, exhibitions and art competitions countrywide. One of the biggest events of this kind,

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the Standard Bank Namibia Biennial exhibition/competition, draws together the works of Namibia's most talented artists of the day, and the exhibition travels to several major towns. Women have always been well-represented in this exhibition and have won many awards.

The University of Namibia's School of Visual and Performing Arts offers extra-curricular evening courses in a number of disciplines, e.g. drawing and painting, ceramics and weaving. This tuition is offered at a very low cost and many women enrol for courses.

In the performing arts a number of "cultural troupes" (song and dance groups) have performed around the country on many occasions, such as at national ceremonial gatherings in Windhoek. Most troupe members are women and girls. The National Theatre of Namibia and the privately-owned and very popular Warehouse Theatre in Windhoek are both active in promoting both male and female performing artists.

The grassroots Bricks Community Project in Windhoek has made an important contribution in the performing arts. Among other services Bricks offers drama training which is cleverly combined with social and legal education and counselling, such as the Legal Reform Programme in the north in which women dramatise their experiences around issues such as domestic violence.

One authority on performing arts feels that there is generally a lack of support for theatre in Namibia, and that theatre "will not survive" unless amateur theatre grows. However, women have a strong presence among existing play groups, and the founder of one renowned group - a woman - believes that women are the group's "driving force", working as performers, producers, directors, set-designers and in managerial roles.

The Literary Arts

Both women and men have been less productive in the literary arts than in other fields, and at this stage more men than women have had their work published. According to one authority, "Namibian literature is only five years old," because until independence the only published literature was produced by people of European descent. There has been a lot of literary activity since 1990 and a growing number of writers are emerging, supported and promoted by publishing houses, literary support groups, and NGOs and academic institutions who commission studies.

One publishing house - founded and managed by a woman - is currently promoting women's literature in particular, and recently released an anthology of Namibian women's literature containing short stories, non-fictional essays, biographical material and poetry. An anthology of Namibian women's short stories and poetry was published recently by the Sister Collective, a Windhoek-based publishing group which also produces the bi-monthly *Sister* magazine, containing news of new developments concerning women. Although no novels by women have been published to date, women of all cultural backgrounds have produced autobiographical works, accounts of the liberation war and exile, and a large number of academic studies.

The literary arts in Namibia may only really begin to flourish once the new generation has sufficiently mastered the English language, since the market for literature in indigenous Namibian languages is extremely small.

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13.5 WOMEN AND DISABILITY

As noted above, about 46% of Namibia's 43 823 persons with disabilities (pwd's) are women. Persons with disabilities account for roughly 3% of the nation's total population. However, some 80% of all persons with disabilities reside in rural areas, mostly in the Omusati, Oshana, Ohangwena and Oshikoto regions which were most directly affected by the liberation struggle preceding Namibia's independence. According to the 1991 Population and Housing Census, 57% of the disabled population between the ages of 15 and 65 are unemployed, with the remainder being primarily self-employed.

The 1991 Census found that 52% of children with disabilities above the age of six had never attended school, compared with only 22% of the overall population. There are three schools for children with disabilities: one for visual and hearing-impaired children in the Oshana region, and two in Windhoek for children with severe learning disabilities.

Discrimination against persons with disabilities is a problem in Namibia - a problem which often goes unnoticed because much of it is subtle and unregulated by statute. Some people may hide their children with disabilities because they think such children are a curse on the family, while others are ashamed of their children with disabilities. Persons with disabilities often have a particularly difficult time finding employment since people without disabilities tend to be unaware that many persons with disabilities are able to reach high educational levels and perform the same careers as anyone else - even though this may take greater effort and determination.

Discrimination also occurs in other spheres. For example, many life insurance companies will not insure people with disabilities, or may charge them loaded premiums, and some medical aid schemes exclude payment of costs related to disabilities. Some airlines restrict the use of their services by disabled persons, and it is sometimes difficult for a person with disabilities to join gymnasiums.

Some disabilities necessitate special equipment which is prohibitively expensive. For example, a blind person needs a personal computer with a speech synthesiser and scanner in order to deal with ordinary print. This is a particular problem in a country like Namibia where many people live close to the poverty line.

The woman with disability - particularly in the African context - has a double handicap: women in many of Namibia's communities are still defined by their roles as child-bearers, and by their domestic and agricultural functions; a woman with disability who cannot fulfil these roles may face a lonely existence. Women with disabilities are at a particular disadvantage in the job market, where they often face discrimination on both counts. Women with disabilities in Namibia report that it is sometimes easier for a man with disabilities to socialise, and that men with disabilities are often more mobile than women with similar disabilities. The removal of obstacles faced by women with disabilities will take time, since two different forms of discrimination must be tackled on separate fronts.

The Government has several initiatives aimed at persons with disabilities. For example, the Ministry of Basic Education & Culture is in the process of establishing an Institute for Special Education which will provide training to teachers in diagnosing and assisting disabilities. The Ministry of Health & Social Services is running a pilot programme involving "medical rehabilitation assistants" who link the community with the support services available at state medical facilities. The Ministry of Lands, Resettlement & Rehabilitation assists several self-help projects for persons with disabilities and plays a co-ordinating role.

The National Pensions Act provides for the payment of monthly pensions to persons with disabilities, with women and men being treated identically for this purpose. At the end of 1995, the Government was paying 6709 disability pensions and 175 pensions to blind persons. No gender-disaggregated stistics are available.[14] In addition, a draft Child Care and Protection Act currently under consideration by the Ministry of Health & Social Service proposes a children's with disabilities grant which might be used to help families bear the costs of special education or equipment.

Namibia is a signatory to the Declaration on the Year of Persons with disabilities and has endorsed the international Programme of Action for Persons with disabilities. In 1995 the Government held a consultative workshop around the issue of disability. The recommendations from this meeting will ultimately form the basis of a national policy on disability and accompanying legislation. Already, the Labour Act forbids discrimination on the basis of disability, and persons with disabilities are one of the target groups cited in the draft affirmative action policy of the Ministry of Labour & Human Resource Development.

It has been noted that one area in need of practical attention is the accessibility of government buildings to persons with disabilities.

In general it will be important to stimulate public awareness on the rights and abilities of persons with disabilities in the coming years.

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[14] Information compiled by the Ministry of Health & Social Services.

ARTICLE 14

Rural Women

14.1 INTRODUCTION

Rural women are the largest demographic group in the country, comprising more than one-third of the Namibian population. Although Namibia has made much progress in improving living conditions for its rural population since independence in 1990, the lot of rural women still remains an area in great need of improvement.[1]

The Namibian Government inherited a system in terms of which the German and South African colonisers created reserves based on so-called "ethnicity". These reserves gave birth to a system of cheap labour by restricting movement into the prime areas of the country, and the characteristics of a migratory labour system are still apparent in post-independent Namibia. This has resulted in an abundance of impoverished rural households comprised of the elderly, women and young children.

> *Rural women juggle multiple roles as farmers and income-earners, mothers and caretakers. They therefore have a central contribution to the health and well-being of the nation's population. Yet, rural women must contend with food insecurity, heavy workloads and unequal access to productive resources. Women farmers are less likely to benefit from agricultural extension and inputs. Despite a national commitment to gender equality, the needs and priorities of rural women have yet to be integrated into Namibia's development policies and programmes.*
>
> UN Food and Agricultural Organisation, *UN Bulletin*, December 1995, p.16,
> summarising some of the findings of *Women, Agriculture and Rural Development: National Sectoral Report for Namibia.*

14.2 STATUS OF RURAL WOMEN

Notwithstanding the large number of rural women in Namibia (see Table 1), they are severely disadvantaged in terms of access to land, labour, agricultural services and assets, natural resources and employment. Rural women are also virtually absent from decision-making and leadership structures.[2]

TABLE 1: Population by sex and urban/rural

DEMOGRAPHIC GROUP	POPULATION	% OF TOTAL POPULATION
Urban male	231 435	16,4%
Urban female	224 405	15,9%
Rural male	454 892	32,3%
Rural female	499 188	35,4%
TOTAL	1 409 920	100,0%

FAO - see footnote 1 (Source: 1991 Population and Housing Census).

There are 13 Regional Councils in Namibia, which have general responsibility for the allocation of resources, and women are extremely under-represented on these fora. Only three of a total of 95 regional councillors are women, and there is only one woman on the 26-member National Council.[3] (See also the discussion of Article 7 of CEDAW in this report.)

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[1] Food & Agricultural Organisation (FAO) of the United Nations, *Women, Agriculture and Rural Development (National Sectoral Report for Namibia)*, Rome, 1995, p.1.

[2] *Ibid*, p.1.

There are no women in management positions in the Ministry of Agriculture, Water & Rural Development. Women have also been under-represented in key government-appointed committees. For example, the Technical Committee on Commercial Farmland had only one woman out of nine members, and the Commission of Enquiry into Traditional Leadership had no women at all. The National Task Force on Agricultural Policy has only one woman out of six members.[4]

Although there are a few women chiefs, by and large they are excluded from authoritative positions within traditional systems of decision-making.[5]

Many pre-independence laws which discriminate against women are still operative, and of these the laws relating to marriage are the most limiting to women's status. Women in customary marriage are generally dependent on their husband's authority to sell property or enter into contracts. In some areas of Namibia the system of *lobola* (bride price) is still popular.[6]

Even where households in rural areas are "headed" by women, this does not necessarily mean that the woman concerned has greater status or power. Important decisions may be made by male members of the extended family, and the entire household may suffer the impact of rural women's vulnerable social and economic position. For example, a study conducted in the communal areas of the Hardap and Karas Regions in the south of Namibia concluded that the most frequently occurring types of female-headed households are those which are headed by unmarried women or widows. Of the women heading households, 23% have no schooling at all; 48% have acquired primary school education; 26% have completed secondary school; and 53% of female-headed households had no employed member and no regular cash income apart from pension payments.[7]

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[3] *Ibid*, p.9.

[4] *Ibid*, p.10.

[5] *Ibid*, p.11. For more information on women in traditional leadership roles, see the discussion of Article 7 of CEDAW in this report.

[6] *Ibid*, p.15.

[7] A. Iken, M. Maasdorp, C. Solomon, *Socio-Economic Conditions of Mothers in Namibia's Southern Communal Areas*, Social Sciences Division (UNAM) and UNICEF, Windhoek, December 1994, pp.72-73.

14.3 STRUCTURES AND PROGRAMMES TO PROMOTE THE ADVANCEMENT OF RURAL WOMEN

Since independence there has been a proliferation of women's groups, NGOs and government-initiated networks concerned with gender imbalances, but rural regions are still under-represented. However, there are several government initiatives aimed specifically at rural women.

Although the work of all nine gender sectoral committees facilitated by the DWA impacts upon rural women, the Committee on Rural Community Programmes and the Environment will aim its efforts directly at rural women.

This programme aims to:

- establish effective rural water supplies or services and co-ordinate water supply between government, NGO and donor agencies;
- strengthen and expand the existing subsidy programme;
- recognise and strengthen community structures to ensure local participation in rural development programmes and the promotion of community development committees;
- mobilise and sensitise government and NGO field staff to serve as informational sources;
- adapt appropriate technology ensuring household food security to female-headed households;
- expand primary health care;
- review the existing credit system;
- intensify community development programmes;
- promote community participation in the environment; and
- design gender-sensitive programmes and intervention for field officers, managers and policy-makers.

The Ministry of Agriculture, Water & Rural Development established a Steering Committee on Gender Sensitisation in November 1994 to oversee implementation of a programme designed with the help of FAO by the FAO for stimulating gender-sensitive planning. Specific projects to date have included the collection of data on rural women, and sensitisation workshops for policy-makers and technicians. For example, in November 1994, more than 20 agricultural extension workers attended a 10-day workshop on "The Analysis of Difference" which highlighted the importance of including women farmers in extension efforts and explained how to take a gender-sensitive approach to planning and implementing extension activities. Subsequent workshops equipped certain extension workers to conduct regional training on gender issues.

The ministry has also convened a series of regional workshops designed to develop gender-sensitive strategies for implementing its National Agricultural Policy. This process is expected to culminate in a national workshop which will finalise a Plan of Action to address the needs of women farmers.

Another important development is the institution of several programmes designed to improve household food security, especially during Namibia's frequent drought conditions. These programmes are crucial to rural women in terms of their role in subsistence agriculture.

One such initiative is the Household Food Security Programme of the Division of Rural Development in the Ministry of Agriculture, Water & Rural Development, which is supported by UNICEF. This programme focuses especially on improving household food security for female-headed households. Thus far, rural development extension staff have received training in concepts of household food security and gender. ACCORD, an international NGO, is conducting similar training and a recently formed Home Economics Advisory Board is exploring avenues of assisting in income generation and household resource management.[8]

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[8] FAO (fn.1), p.43

Another key effort in this area is the National Food Security and Nutritional Council, which was established in September 1993. This council, which is chaired by the Ministry of Health & Social Services and composed of the permanent secretaries of seven ministries and the National Planning Commission, has the broad mandate to address policy-related issues pertaining to food security and nutrition in Namibia, and is required to ensure that these issues are appropriately linked and well co-ordinated. The council guides the activities of the Food Security and Nutrition Technical Committee and advises and reports directly to Cabinet.

An Emergency Management Unit (EMU) has also been established by the Government to co-ordinate all activities in times of emergency. It is empowered to make quick decisions and to take prompt action. This body has concentrated its efforts on a Drought Relief Programme established during the 1991/92 drought, which targets female-headed households. The EMU operates directly under Cabinet control and is based in the Office of the Prime Minister.

Rural women will also be assisted by the affirmative action provisions of the Co-operatives Act, which is currently being reviewed by Cabinet; registered co-operatives in which more than one-third of the members are women, must have a minimum of one woman on each management committee and sub-committee.[9] This provision should ensure that women in rural co-operatives get management experience. The Traditional Authorities Act also includes provisions aimed at empowering women.[10]

Government initiatives such as these are being complemented by NGO efforts. For example, many rural women are active in churches and church groups. Communication on gender issues takes place through church channels through the efforts of church-related organisations which are integrated into national gender networks, such as the Women's Desk of the Council of Churches in Namibia (CCN).[11]

NGOs such as the Rural People's Institute for Social Empowerment (RISE) and the Namibia Credit Union League (NCU) are supporting local groups in the management and administration of group savings and credit programmes which are more accessible to women than commercial financial institutions.[12]

Other NGOs are attempting to make the law more accessible to rural women. For example, the Legal Assistance Centre (LAC) has paralegal/gender officers in advice offices scattered throughout the country, and the Centre for Applied Social Studies (CASS) is training "community legal activators" in a number of rural areas.

Rural women are being encouraged to participate in decision-making and other aspects of leadership through their involvement in certain initiatives. An example is UNICEF's Integrated Area Based Programme, in which women are represented at all levels of decision-making. Among other programmes which give conscious attention to enhancing the role of women as decision-makers are the Regional Rural Development Programme in the Okavango and the Sustainable Animal Range Development Programme operating in six villages in the east and south of Namibia under the auspices of the Canada-Namibia Corporation (CANAMCO).

The Namibian National Farm Union, established in June 1992 to unite communal farmers on issues of common interest, does not prioritise women, although it is estimated that women comprise 30 to 60% of its affiliated organisations. The group's focus to date has been on training for commercial food production, and there are no programmes aimed at women farmers and their needs.[13]

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[9] *Ibid*, p.14.

[10] See chapter on Article 4 of CEDAW.

[11] FAO (fn.1), p.14.

[12] *Ibid*.

[13] *Ibid*, p.13.

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The NGO Preparatory Committee for the 4th World Conference on Women in Beijing is currently engaged in efforts to establish a Rural Women's Movement following decisions taken in Beijing, in response to the need for more organisations in rural areas which can streamline and co-ordinate development.

14.4 ACCESS TO SERVICES

Twenty-five agricultural extension officers working in the Owambo regions serve a population of over 84 000 farmers, i.e. one officer for over 3 000 farmers. The fact that extension offices usually operate out of regional centres makes their services less accessible to women, who are usually less mobile than men in rural areas. Furthermore, extension officers have been staffed largely by men and the focus is mainly on livestock and commercial production.[14]

The Ministry of Agriculture, Water & Rural Development is taking steps to improve access to its services in the rural areas. More than 12 new agricultural and rural development centres are nearing completion, and through this decentralisation contact between women farmers and extension services will improve.[15] The ministry's intensive gender-sensitisation programme for extension officers (described above) should also help to improve outreach to rural women.

Rural extension officers are also employed by the National Literacy Programme (as district literacy organisers); Ministry of Health & Social Services (as community health workers); the National Traditional Council; the Department of Community Development of the Ministry of Local & Regional Government and Housing; and the Drought Relief Programme. District literacy officers have received specific training in gender sensitisation, and this programme has been particularly successful in reaching women.

It will be important to monitor the impact of the Government's rural outreach programmes on women on an ongoing basis. The recent study of "Community Perceptions of Social Services in Namibia" carried out under the auspices of the National Planning Commission is an important first step in this regard.[16]

Some of the findings of this study have already been noted in the chapters on education and health. In respect of rural women, it is particularly relevant that all the areas studied reported improvements in their water supplies since independence. New boreholes have been drilled, new pipelines laid and water delivery mechanisms upgraded. The result has been a reduction in the time women and children spend on water collection, and an improvement in water quality. However, rural communities are demanding increased control over water points, such as through the establishment of water point committees.[17] It will be necessary to ensure that rural women in particular benefit from increased empowerment in respect of water services.

14.5 APPROPRIATE TECHNOLOGY FOR RURAL WOMEN

Technologies which aim to assist women with the tasks of planting, weeding and harvesting are scarce. For example, women and girls spend about 50 hours per month processing millet in some regions.[18]

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[14] *Ibid*, p.31

[15] *Ibid*, p.42

[16] NPC, *Community Perceptions of Social Services in Namibia*, NPC Study No. 3, 1994

[17] *Ibid*, p.v

[18] FAO (fn.1), p.34

Appropriate technology to reduce the time spent on agricultural processes such as millet processing could greatly reduce the workload of rural women, especially if combined with inputs such as reasonably-priced seeds, implements and pesticides.

It has also been suggested that women's productivity would be increased by greater access to draught animals and ploughs, as opposed to the use of tractor services which are more expensive and more technically complex.[19]

A rural electrification programme has reached rural areas in northern Namibia, but few households can afford the costs of supplying electricity to their homes. The Rural Development Centre in the Oshana Region in northern Namibia is piloting alternative energy sources such as biogas, locally-made charcoal bricks, solar energy and evaporation coolboxes.

The Rural Development Centre has also introduced the "aquaroller" - a water barrel that can be pushed - which proved most efficient during the 1992 drought. More efficient harvesting of rainwater is also being promoted.[20]

An initiative supported by UNICEF will research technologies which are most useful to Namibian women, and the Household Food Security Programme, the Rural Development Centre, the CCN and CANAMCO have started piloting relevant technologies in certain villages.[21] In addition, UNIFEM recently conducted a survey on appropriate technology, the results of which were not finalised by the time of writing (December 1995). Information from these sources should be taken into consideration in the further development of government policy in this area.

14.6 ECONOMIC POSITION AND ACCESS TO PRODUCTIVE RESOURCES

At present customary allocation of land by traditional authorities prevails and in some areas rural women have no direct rights to land. Female-headed households also lack the resources to farm the land which they do have.[22]

This problem is exacerbated by discriminatory laws relating to marriage and inheritance. For instance, women married under civil law still need their husband's consent to enter into credit agreements, although this legal disability will soon be removed.

The Private Sector Foundation has a specific loan programme for women, and credit unions in the southern communal areas and the northern regions have an estimated 70-80% female membership. It must be noted, however, that credit unions presuppose a reliable income and are therefore concentrated in more populated rural centres.

The parastatal Namibia Development Corporation also runs loan programmes aimed at farmers, but it remains to be seen whether women have benefited from these.

In 1992, the Ministry of Agriculture, Water & Rural Development implemented a scheme in terms of which communal farmers could obtain loans, but the majority of the total amount loaned has been for the purchase of stock, and it is doubtful that women have benefited from this scheme since the purchase of stock is traditionally a male domain. The ministry is in the process of initiating an agricultural bank to administer loans for small-scale farmers, but no mention has been made of an affirmative action provision aimed at women.[23]

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[19] *Ibid*, p.31.

[20] *Ibid*, p.34.

[21] *Ibid*, p.43.

[22] *Ibid*, p.27.

The results of various surveys have indicated that on average women in rural areas manage to save considerably less than men. According to a survey conducted in the former Owamboland, women save N$227 per annum on average, and usually keep their money at home, whereas men save N$966 per annum and invest it with banks.[24] This fact points to the need to target women in public education campaigns on financial management.

Although agriculture provides the most employment, it is not the major income provider and households must rely on monetary income from other sources to cover basic needs such as food.[25] Thus, without more access to and control over cash income, rural women will continue to find themselves subordinate to male wage earners.

Government is the primary employer in rural areas. Private sector employment is limited to poorly paid work in small shops or on commercial farms and construction work.[26] Women are insufficiently represented in the formal sector. Even though many women in rural areas have high levels of literacy and education, this does not seem to help them to get jobs, and they are absent in particular from jobs requiring physical labour, such as construction work. It is also difficult for rural women to fill professional posts, since they are usually less literate and less educated than women in urban areas.[27]

TABLE 2: Population aged 15+ by sex, activity status and zone

ACTIVITY STATUS	URBAN		RURAL		TOTAL	
	Male	Female	Male	Female	Male	Female
Economically active	74,7%	50,8%	64,1%	48,1%	68,6%	49,0%
Not economically active	25,2%	49,1%	35,5%	51,8%	31,3%	50,9%
TOTAL	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

FAO, see footnote 1 (Source: *1991 Population and Housing Census*).

TABLE 3: Literacy rate by sex and urban/rural

LITERACY STATUS	RURAL		URBAN		TOTAL
	Male	Female	Male	Female	
Literate	70,0%	68,4%	90,3%	89,9%	76,6%
Illiterate	30,0%	31,6%	9,7%	10,1%	23,4%

FAO, see footnote 1 (Source: *1991 Population and Housing Census*).

An additional problem which rural women must contend with is the lack of pre-schools and crèches in rural areas. Those women who do obtain employment must then rely on their families to look after their children.[28]

Two road projects recently embarked upon in the north of the country focused on the equal participation of women and men,[29] but this type of attention to rural women is the exception rather than the rule.

Although a bustling informal sector has emerged since independence, men dominate high income activities such as taxi driving while women tend to sell food, beer or crafts (see also discussion on culture under Article 13 of this report, regarding "crafts"). However, some women do run profitable businesses and in the Caprivi Region women dominate the fish market, and some own boats, hire fishermen and provide credit.[30]

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[23] *Ibid*, p.29

[24] *Ibid*, p.30

[25] *Ibid*, p.36

[26] *Ibid*, p.37

[27] *Ibid*.

[28] *Ibid*.

[29] *Ibid*.

[30] *Ibid*, p.38

Women are also engaging in community projects initiated by churches, NGOs and government departments, but income-generating projects are concentrated in rural centres since it is here that there is purchasing power.[31] UNIDO and the DWA are currently involved in a joint assessment of income-generating activities which may lead to more effective interventions in this area.

14.7 GOVERNMENT POLICY ON AGRICULTURE AND RURAL DEVELOPMENT

The Draft National Agriculture Policy for Public Consultation prepared by the Ministerial Policy Task Force and the Directorate of Planning in Windhoek in 1994 accepts that women make up the majority (52%) of rural residents and confirms their central role in agriculture. The policy highlights the need to secure their participation in agricultural development and states that women need to be recognised as farmers in their own right.[32]

This policy document accepts that women's access to and control over household resources remains marginal and states that the Government will ensure that this vulnerable group is not left behind by means of a strategy that will provide for the basic needs of all Namibians.[33] In addition, detailed gender analysis of farming households will be undertaken to facilitate the development of gender differentiated strategies for increased household food security.[34]

The document also states that the role of women in agricultural development needs to be re-emphasised and their participation in agricultural organisations and related institutions ensured. It states that existing social norms and values relating to women will have to be changed and women will be assisted in overcoming constraints to their participation in development efforts related to lack of knowledge, shortages of labour and poor access to services and finance.[35]

As far as extension services are concerned, the policy is that the Government will endeavour to deliver and target extension officers to female-headed households and the ratio of extension officers will be altered in favour of female officers in order to address the needs of women in agriculture.[36]

The Government supports the provision of credit to both men and women farmers, in communal and commercial areas throughout the country. Government will support changes in the marriage legislation to enable married women to have access to credit (and, as discussed under Article 15 below, legislation to accomplish this is already before Parliament.) Furthermore, it is felt that at this stage the bulk of agricultural credit operations can be most efficiently carried out by banking institutions. The potential role of credit unions and other credit and savings associations will also be promoted. If some poor rural households are shown to be ineligible to receive loans, the Government will provide other support targets so as to meet their specific needs in the form of non-collateral and supervised credit schemes which link production technology with credit and markets.

While the need for credit in the rural areas is broader, the National Agricultural Credit Programme will initially address only the need for financing farm investment, agricultural processing and agriculture-related investment opportunities. Credit for rural enterprises not related to agriculture will only be provided under the scheme once it is well-established and operating smoothly - and then only in close collaboration with other institutions involved in providing credit in rural areas.[37]

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[31] *Ibid*, p.39

[32] Ministry of Agriculture, Water and Rural Development (MAWRD), Ministerial Policy Task Force and Directorate of Planning, *National Agriculture Policy: Draft for Public Consultation*, Windhoek, November 1994, p.2

[33] *Ibid*, p.3

[34] *Ibid*, p.5

[35] *Ibid*, p.9

[36] *Ibid*, p.11

[37] *Ibid*, p.16

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The Government admits that the specific issue of access of rural women to land needs to be considered, and in this context the Government will review the present inheritance system which still tends to discriminate against women.

The Government will remove unnecessary barriers to the development of informal sector activities by relaxing or modifying overly restrictive regulations on small businesses and services, such as food vending and transport. In order to safeguard public health, the removal of unnecessary barriers will be combined with educational programmes aimed at improving the hygiene standards of informal marketing outlets.

As noted above, the Ministry of Agriculture, Water & Rural Development is in the process of preparing a Plan of Action which will focus more specifically on the gender implications of the National Agricultural Policy.

More generally, the National Development Plan commits the Government to the formulation of a National Rural Development Policy which will include "support for women farmers and women-headed households in rural development, including establishment of gender-focused training and participatory techniques and income-generating projects for women." [38]

14.8 CONCLUSION

Rural women remain a disadvantaged and vulnerable grouping within Namibian society and intensive efforts by both government and non-governmental organisations need to be implemented to empower them and to improve their capacity.

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[38] *NDP1 Vol. II*, Public Sector Investment Programme, p 36

ARTICLE 15

Legal Capacity and Domicile

15.1 INTRODUCTION

As noted in the chapter on CEDAW Article 1, the Namibian Constitution provides that "All persons shall be equal before the law," and explicitly forbids discrimination on the basis of sex.[1] At the time of writing (December 1995), Parliament was considering a bill which would put this formal guarantee of legal equality into practice with respect to the legal capacity and domicile of married women.

15.2 CIVIL MARRIAGE

Both men and women attain majority at age 21, and single adults of both sexes have equal legal capacity.[2] However, as a recent report of the Law Reform & Development Commission (LRDC) points out, "The common law marital power of the husband over the property and person of his wife denies married women equal rights with their husbands during marriage and limits their capacity to participate in civil society. The marital power discriminates against women and is not compatible with the principle of equality which is entrenched in the Namibian Constitution and various international treaty obligations undertaken by Namibia."[3]

In terms of the Roman-Dutch common law inherited from South Africa at independence, all civil marriages in Namibia are subject to the common law concept of marital power unless the parties to the marriage make an antenuptial contract specifically excluding it. This means that the husband is the "head of the household" with the decisive say in all matters concerning the common life of the spouses. for example, he can decide where and how the couple will live, and he is the "natural guardian" of any children born of the marriage.

A further consequence of marital power is that a wife cannot bring a civil action or enter into a contract (other than a contract for household necessities) without the "assistance" of her husband. The husband technically has power over the person of his wife, but in modern times this has not been interpreted to allow husbands to control their wives' movements or daily activities.

Marital power also gives the husband control over the wife's property: if the marriage is in community of property, he has control over the joint estate of the couple, if the marriage is out of community of property, marital power gives him control over the wife's separate property. There are a few statutory exceptions to this general rule[4], for example, a married woman can open a bank account in her own name and she has certain control over property which relates to her own employment or business - but primary control of the property of the marriage remains with the husband unless marital power has been excluded. He has the sole power to sell or borrow against the assets of the marriage, and he has no obligation to consult with his wife, or even to inform her of his transactions.

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[1] Namibian Constitution, Article 10.

[2] Age of Majority Act 57 of 1972.

[3] Law Reform & Development Commission, *Aspects of Family Law: The Abolition of Marital Power and Equalisation of Rights Between Spouses* (Report No 1), October 1994, p 3.

[4] See the Matrimonial Affairs Ordinance 25 of 1955.

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The common law concept of marital power has led to a number of related statutory disabilities for married women who are subject to the marital power. For example, women who are married in community of property cannot register land in their own names, and women who are married out of community of property cannot register land without their husbands' consent unless the marital power has been excluded.[5] A woman who is subject to the marital power cannot be a director of a company or an executor of an estate without her husband's consent.[6]

Furthermore, a woman automatically acquires the domicile of her husband upon marriage, while any children born of the marriage will have the domicile of their father.[7]

It has often been said in public discourse in Namibia that married women who are subject to the marital power are in virtually the same position as minors. In fact, as the LRDC observes, such a married women is actually in a worse position than a minor:

"There are similarities between the legal position of a minor and that of a married women subject to marital power. But, whereas the guardianship of a minor serves the interests of the minor, the marital power serves primarily the position of the husband. Few of the safeguards for minors under guardianship apply in the case of a married woman."

Hahlo, *The South African Law of Husband and Wife, Fourth Edition*, p.161,
quoted in Law Reform & Development Commission (fn.3), p.8.

15.3 LAW REFORM IN RESPECT OF CIVIL MARRIAGE

The concept of marital power is clearly unconstitutional and has therefore occupied a high position on the agenda of the LRDC. Nevertheless, change has been slow in coming. The Women & Law Committee of the LRDC held a consultation in Windhoek on the abolition of marital power in March 1994, at which it solicited the input of professionals such as lawyers, bankers, insurance company executives and government officials. An official report accompanied by a draft bill was made public in November 1994. In late 1995 the Married Persons Equality Bill was introduced into Parliament and was still under debate at the time of writing (December 1995).

Calls for change in the laws on marriage - and in particular for the abolition of marital power -have come from a number of women's fora since independence. The slowness of legal change is attributable in part to the imbalance between the small number of legal drafters available and the large number of new laws competing for attention. In addition, the LRDC is made up of people with full-time employment elsewhere and has not up to now had sufficient staff support. Another factor is the absence of lobbying groups and skills among Namibian women, who have not yet managed to mobilise their power as a voting bloc or to find strategies to press their demands effectively.

The Married Persons Equality Bill presently before Parliament would eliminate marital power completely, in respect of both existing and future marriages, thus removing the legal disabilities which married women currently suffer.

In terms of the bill, couples who are married in community of property will henceforth be required to consult each other on major transactions, with husbands and wives being party to identical powers and restraints. There will be avenues of redress where consent to a transaction is unreasonably withheld by either spouse. Where the requirement of consent was ignored by either the husband or the wife, the wronged spouse will be able to seek recourse during the existence of the marriage and not just at its dissolution.

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[5] Deeds Registry Act 37 of 1939, section 17, Registration of Deeds in Rehoboth Act 93 of 1976, section 10.

[6] Companies Act 61 of 1973, section 218, Administration of Estates Act 66 of 1965, section 17.

[7] For more detail about marital power, see Law Peform & Development Commission (fn.3). See also D. Hubbard, *Women and Children in Namibia: The Legal Context*, NISER, University of Namibia, 1991.

The initial proposal of the LRDC suggested that husbands and wives should have joint guardianship of their children, but the present bill calls for equal guardianship which can be exercised independently by either spouse rather than only in consultation with each other - an approach necessitated in part by the fact that husbands and wives in many Namibian families live apart for large portions of the year because of prevailing labour patterns. However, the consent of both parents will be required for important decisions, such as consent to the child's marriage or adoption, or the removal of the child from Namibia.

The bill will make the wife's domicile independent of that of her husband, and the domicile of the children of the marriage will be the place with which they were most closely connected.

The Married Persons Equality Bill has inspired heated debate in Parliament, although much of the disagreement among parliamentarians relates to the details of the legislation and not to its overall thrust. Some of the misunderstandings which have surfaced in Parliament point to confusion which can be expected on the part of members of the public once the bill has been passed. The gender sectoral committee on Women & Law which has been facilitated by the DWA is already planning an educational campaign around the new law which will be spearheaded by the LRDC.

The following excerpts from the parliamentary debate on the Married Persons Equality Bill give an indication of the range of views and concerns expressed:

"Nations are made up of women and men. It is only logical that for right decisions to be taken, both men and women should play an equal role. As such, one can hardly do much if half of your body is paralysed. Families and nations have suffered by not fully utilising both women and men."

The Hon. Deputy Minister of Foreign Affairs, Ms Netumbo Ndaitwah (MP, SWAPO).

"[T]he common law position or notion of the husband assuming the headship of the family unit is not something that came about as an historical accident; it a natural phenomenon common to both human beings and beasts. In fact, no two heifers can have two bulls as husbands simultaneously. Should this privilege be legislated away merely for the sake of effecting absolute equality between the two genders, a very far-reaching controversy could arise, as there can be no such thing as a country, a school or even a house without the head of such a state or institution. A train without a locomotive is unheard of!"

The Hon. Philemon Moongo (MP, DTA).

"As a married person ... I fail to understand how a household can be allowed to be headless or have dual leadership at the same time. It is against all norms of civilisation and tradition to have such a kind of set-up in a family. Tradition, culture, civilisation and religion dictate that there should be a senior manager in a well-structured family. For those of you, Hon. Members, who believe in the Bible, I would like to quote the following from Genesis 2:18: 'The Lord said, it is not good for the man to be alone. I will make a helper suitable for him.' Genesis 3:16 also qualifies the above-quoted chapter. If we then intend to amend God's constitution which is the Bible, I do not want to be part of and parcel of that special select committee."

The Hon. Mr Kemba (MP, DOUFI: SWAPO).

"The discrimination and oppression of women is a cancer in the flesh of humanity. Men are part of humanity, therefore this deadly disease affects all of us, women and men. Some people try to justify this cancer by calling it a tradition, a way of life and even a heritage which must be preserved. Whatever may be said, for the sake of a better tomorrow for our children and their children, we cannot allow this disease to be carried into the 21st century. We also cannot go on talking about it forever; it must be removed now. I therefore support the Married Persons Equality Bill as a major step towards the liberation of women and men in Namibia."

The Hon. Dr Zephania Kameeta (MP, SWAPO).

"The one clause which causes me some problem is clause 16. It says: 'The provisions of Parts I and II will not apply to marriages by customary law.' Many, many people in this country still marry under customary law ... Our Constitution says everyone living in Namibia will be equal. It is discrimination in terms of our Constitution. Every woman who marries should have the same rights, whether they marry in a civil marriage, under the common law or under customary law."

The Hon. Mr Hartmut Ruppel (MP, SWAPO)

"I support the principle of the Bill because it gives full effect to the provision of equality as enshrined in the Namibian Constitution ... I fully agree that there must be a head of the family, but I disagree that it be made mandatory by law who it must be. Let it be the choice of the married ones to decide among themselves ... The unfortunate side of this Bill under discussion is that it is only ending discrimination against women in civil marriages. Under customary law women continue to suffer and be discriminated against."

The Hon. Mr Nico Kaiyamo (MP, National Council, SWAPO)

"... I have stated that I support the Bill in principle. However ... I disagree partially with the restriction on marital power where it proposes that the common law position of the husband as head of family be abolished. This cannot be accepted. Husbands as heads of families should be maintained. Husbands are naturally accepted as heads of families and they, in turn, naturally accept this natural responsibility. The nature made them to be heads of families. Each family needs a leader and in this case, a husband."

The Hon. Mr Ya Kasita (MP, National Council, SWAPO)

"To me the man is the head of the family, that is my principle ... I want to prove my argument with this example: The Creator gave freedom to the first people. They could enjoy it as they wished, make their own decisions and the first woman had the choice to make her own decisions. And then she made the wrong one and overpowered the man to accept her decision as correct. She was chosen to bring children into life with much pain and stay no longer in the most beautiful place on earth ... I must admit that some men still treat women as slaves. They feel inferior and we have to fight such injustice, but I still cannot see why we need legislation to enforce it. An educational process would, as far as I am concerned, bring more success to equality in marriage."

The Hon. Mr S. Cloete (MP, National Council, SWAPO)

"Since the introduction of this Bill in this Chamber I have heard arguments of sorts made by my fellow legislators ... some of the arguments were so out of place and sensitive and counter-productive, they cast multiple doubt on my mind as to whether the colleagues have taken the trouble to read and comprehend the Bill ... Some colleagues quoted from the Bible ... The point they were illustrating is the God-made inequality between man and woman, as well as the woman's subordinate position. Well, Namibia is a secular state ... we are busy making laws here, not preaching ... This Bill is the embodiment of that constitutional right of all persons to be equal before the law ... We fought side by side to liberate this country with the hopes to share the fruits of such liberation. Now that the independence is here, you colleagues want to turn around and indirectly take over the role of the colonists by oppressing and discriminating against women ..."

The Hon. Ms Hamutwe (MP, National Council, SWAPO)

"... marriage is holy and I feel that if the legislators tamper with it unnecessarily, we might cause havoc in our nation ... Men and women cannot be equal. Even God, the Creator, did not consider such a situation ... Man is the image of God and when we pray, [we say] 'Our father in Heaven,' but not 'Our Mother in Heaven.' This means that man is more powerful than woman. That is why there is no way to deprive him of his power or status. In many black communities in Namibia, if not in the whole of Africa, men must pay lobola in different forms to the family of his wife. Why do women not do the same if they are equal? Men can dig holes, working underground in mines, which means that men can be trusted to do hard work. Do we also expect women to do the same? A hen cannot become a cock and it remains so."

The Hon. Mr Sheyapo (MP, National Council, SWAPO)

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At the time of writing, the National Council had referred the bill to a select committee which was planning to hold nationwide hearings to solicit public opinion. The bill was expected to become law in early 1996. Of course, it remains to be seen how effective the law will be in changing patterns of decision-making within households. The impact of the new law will be analysed as time goes by, in order to try to understand the influence of law reform on family practices.

15.4 CUSTOMARY MARRIAGE

The question of a woman's legal capacity in terms of customary law is far less clear-cut. One recent study of marriage and customary law concluded that although women in all of the communities under investigation had certain *de facto* decision-making powers and a varying degree of control over their property, they were nevertheless generally subordinated to men in areas such as decision-making in family matters and control over property.[8]

For example, this study examined women's legal capacity in matrilineal communities in the Owambo and Kavango areas, in the Herero double descent system and in the cognatic kinship system of the Caprivi area. It is difficult to summarise the findings in respect of any of these communities, as a woman who enjoys full legal capacity in one area of life may lack it in another.

For example, according to this study, there is no fixed age of majority for either men or women in matrilineal communities in the Owambo and Kavango areas. Girls acquired the status of adults after undergoing certain individual and collective initiation ceremonies. Boys in some Kavango communities attained adulthood through a certain rite, while boys in the Owambo communities studied were considered adults only after they married and set up their own homesteads.

Men in both areas seemed to have a greater degree of independence than women in respect of property transactions, but the power of both men and women over property was found to be subordinate to the clan or lineage network. Women's control over property also differs according to the type of property in question, as men and women have varying degrees of autonomy, depending on whether the property is cattle, agricultural produce or modern consumer goods such as cars.

In the matrilineal communities, children belong to their mother's lineage and clan. However, actual authority is usually exercised by a male member of the mother's family, often her brother, and the matrilineal system does not prevent the children's father from having a significant degree of power and influence.

Women in the Kavango areas are represented at all levels of traditional leadership, including that of chief, and they have full powers to speak in the traditional courts. In the Owambo communities studied, on the other hand, this aspect of legal capacity was more ambiguous. There are no female chiefs or senior headmen, although existing traditional leaders claim that there is no bar to the participation of women at these levels - and are in some instances willing to implement affirmative action to help women move into leadership roles.[9] Furthermore, although traditional leaders in all of the Owambo communities claimed that men and women have equal rights to attend and to speak at traditional courts, women in these communities asserted that they were excluded from participation in these fora.[10]

This example shows how complex the concept of legal capacity becomes under customary law. In general, however, although women have varying degrees of power and autonomy under customary law, decision-making and control over property within marriage is generally dominated by the husband and

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[8] H. Becker and M.O. Hinz, *Marriage and Customary Law in Namibia*, Centre for Applied Social Sciences, Windhoek, February 1995, p.121.

[9] See the chapter of this report dealing with Article 4 of CEDAW concerning affirmative action.

[10] Becker & Hinz (fn.9), p.53-ff.

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male members of the extended family.[11] There is clearly a need to ensure that men and women have a greater degree of equality under customary law, but this is an area where much more detailed research will be needed to guide policy-making.

The LRDC has a Customary Law Committee which recently inaugurated a long-term research project into the relationship between general law and customary law, particularly in the family context. Inheritance practices under traditional law are also under review. It is expected that research efforts such as these will be continued and expanded in the coming years. In the meantime, the portions of the Married Persons Equality Bill which give married women a domicile independent of that of their husbands, and the provisions which make husbands and wives equal guardians of the children of the marriage, have both been made applicable to civil and customary marriages alike.

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[11] Ju/'hoan communities provide an example of a different pattern. Although women occupy a more egalitarian position within the family, the entire group is disempowered by its extreme marginalisation.

ARTICLE 16

Marriage and Family Relations

16.1 INTRODUCTION

The Namibian Constitution provides strong protection for the equality of men and women in matters relating to marriage. Article 14 (quoted in full in the chapter on CEDAW Article 1) provides that all men and women of full age shall have the right to marry and found a family, and "shall be entitled to equal rights as to marriage, during marriage and at its dissolution." Marriage may be entered into "only with the free and full consent of the intending spouses." However, in many respects these constitutional mandates are inconsistent with existing law and practice. This chapter will examine practices in terms of both civil and customary marriage.

Civil marriages

Civil marriages, which must be registered, are governed primarily by Roman-Dutch common law, which affords women a generally inferior status. Unless there is an antenuptial contract which states otherwise, all civil marriages are in community of property - except for marriages between blacks contracted in the northern areas of the country, which are automatically out of community of property if contracted after 1 August 1950.

All civil marriages, whether in or out of community of property, subject the wife to the marital power of the husband unless there is an antenuptial contract which explicitly excludes this power. This serious site of discrimination against women, which has been discussed fully in the previous chapter, is expected to be abolished by Parliament during 1996.

From 1990-93, an average of about 6 000 civil marriages were registered annually nationwide.[1]

Customary marriages

It is difficult to make generalisations about customary marriage in Namibia's diverse communities. Nevertheless, it can be said that customary marriage is generally regarded as an alliance between two kinship groups rather than two individuals. There is frequently a "bride price" or "marriage consideration" which has different connotations in different communities. As with civil marriages, the power relationships between husband and wife are often unequal, but the situation is complicated by the fact that authority over various family matters may be spread among different members of the two kinship groups.

Customary marriages are generally at least potentially polygamous.

There is no legal requirement that customary marriages be registered, making precise statistics on their existence more difficult to obtain.

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[1] Central Statistics Office, *Statistical Abstract, 1994*, p 27.

Marriage patterns

According to the 1992 Demographic and Health Survey, 42% of female respondents aged 15 and older were currently married (including the 15% of the respondents who reported that they were living with someone in an informal union), while another 7% were previously married and now widowed, divorced or separated. This survey showed that the median age at first marriage was 25 for women in the 30-34 year age group at the time of the survey, as compared to 23 for women who were 45-49 years of age at the time of the survey, thus indicating that women are gradually tending to marry slightly later in life. There are substantial regional variations in the typical age at first marriage, with the lowest age being 18,9 years for women in the north-east.[2]

Civil marriages seem to be growing in popularity, partly as a result of the influence of Christianity. However, there is also evidence that it is not uncommon for a couple to marry in terms of both civil and customary law, and to rely upon different legal and social norms, depending on the situation at hand.

For example, in the urban area of Katutura, the incidence of civil marriage has risen from about 24% of all households where a couple live together in a conjugal relationship in 1968-70 to about 47% of all such households in the post-independence period. Traditional marriages were found to be rare in Katutura during both periods studied. However, this fact is somewhat misleading, as civil marriages often incorporate customs usually associated with traditional marriage, such as bride price, thus producing an intertwining of the two systems.[3]

A similar pattern can be observed in some rural areas. A recent study of three Oshiwambo-speaking communities in the north of Namibia found that only about 5% of respondents had been married in accordance with customary law, while 33% of the respondents had been married in church or a magistrate's court. However, there were many cases in which traditions associated with marriage under customary law were observed in conjunction with marriages solemnised according to civil law. But customs differ in different areas; while marriages conducted according to both civil and customary law have been found to exist in both Owambo and Herero communities, customary marriage is reportedly far more prevalent than civil marriage in communities in the Caprivi.[4]

Family characteristics

As a backdrop to the following discussion, it should be kept in mind that for most Namibians the concept of "family" goes far beyond the nuclear family to include grandparents, aunts, uncles, cousins and other extended family members. Family arrangements are thus complex and multifaceted, and a married woman may be affected by the decisions of men and women in her husband's extended family as well as her own.

It is not uncommon for a man and woman to live together as man and wife without any formalisation in terms of either civil or customary law. This kind of cohabitation is not legally recognised. There are also "second house" relationships, in which a man who is married to one woman establishes a "second house" with another. This practice is usually found in urban areas, where a man from a rural area has left one family behind in search of employment. These "second house" relationships are not recognised under civil or customary law.

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[2] Ministry of Health & Social Services, *Demographic and Health Survey 1992*, May 1993, p.47-ff

[3] W.C. Pendleton, *Katutura: A Place Where We Stay*, Windhoek, 1994, pp. 82, 90

[4] H. Becker & M.O. Hinz, *Marriage and Customary Law in Namibia*, Centre for Applied Social Sciences, Windhoek, February 1995.

As in many other countries, children are frequently born outside of marriage. one man often fathers children with more than one woman while one woman often bears children of different fathers. Children born outside of marriage are usually cared for by the mother or by a member of her extended family.

A significant number of Namibian households are headed by women. According to the 1991 Population and Housing Census, 43% of rural households and 32% of urban households are female-headed. Female-headed households are usually financially more vulnerable than other households, although this is not invariably the case.

There are two common patterns of female-headed households in rural areas. One pattern is a three-generation household, in which a widowed or separated woman heads a household which includes unmarried adult children, usually daughters who may have children of their own. Another pattern is a "missing generation" household, in which a widowed or separated woman cares for grandchildren whose parents have relocated to urban areas to search for employment or to further their education.[5]

16.2 THE RIGHT TO ENTER INTO MARRIAGE

Article 14 of the Constitution guarantees men and women equal rights "as to marriage". However, at the time of writing (December 1995), the age of consent for entry into civil marriage is different for boys than for girls. Civil marriage is prohibited for boys below the age of 18, and for girls below 15, unless permission is obtained from an appropriate government official. This inequality will be rectified by the Married Persons Equality Bill currently before Parliament, which would set the legal age for marriage at 18 for both boys and girls. At present, minors (children below the age of 21) who wish to marry would still need the consent of their parents or guardians.

Men and women also enjoy unequal rights to enter into customary marriage because of the practice of polygamy. In the 1992 Demographic and Health Survey, one out of eight married women reported that their husbands had other wives.[6] Polygamy is most common in the north-east, and most women in polygamous unions tend to be comparatively older and less well-educated. Polygamy is also more than twice as high in rural areas as in urban areas. There is little information on the impact of such multiple relationships on the women and children who are affected.

A law left over from the colonial era makes provision for a black man who is married under customary law to enter into a civil marriage, provided that he formally declares what property belongs to the wife and children of the customary marriage.[7] Thus, the civil law endorses the man's unequal right to enter into multiple marriages under certain circumstances.

The issue of polygamy is a sensitive and controversial one. For example, one study which recommends the ultimate abolition of polygamy also argues that existing polygamous marriages should be recognised to protect women without other options, as well as the children born of such unions.[8] This issue warrants further study before action is taken.

For both women and men in Namibia, the right to enter into marriage freely is qualified by a lack of information about the legal consequences of marriage. Without a clear understanding of the ramifications of the different marital property regimes or the effects of an antenuptial agreement, it is difficult for women or men to make an informed choice. This is a problem which can best be addressed by public education campaigns.

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[5] Social Sciences Division (UNAM), LAC & UNICEF, *Children in Namibia: Reaching Towards the Rights of Every Child*, Windhoek, 1995, pp.34-35

[6] Ministry of Health & Social Services (fn 2), p.48

[7] Native Administration Proclamation 15 of 1928, section 17.

[8] Becker & Hinz (fn 4), p.119

16.3 FREE CHOICE OF A SPOUSE AND CONSENT TO MARRIAGE

As noted above, in terms of Article 14 of the Namibian Constitution, marriage may be entered into "only with the free and full consent of the intending spouses".

There are indications that in the past, customary marriages in some communities in Namibia were arrangements between families which did not necessarily involve the consent of the intended spouses. However, current reports indicate that the consent of both the prospective bride and groom is now customarily required.[9]

More information on this point should perhaps be collected, although forced marriage has not emerged as a particular problem in Namibia since independence.

16.4 RIGHTS AND RESPONSIBILITIES DURING MARRIAGE AND AT ITS DISSOLUTION

Equality during marriage

The subordinate legal status of women during the subsistence of both civil and customary marriage has been discussed in the previous chapter. Legal capacity in all its different manifestations is the main disability which women experience during marriage, and - at least in the case of civil marriage - change is on the horizon.

This will do little to address the deeply-entrenched gender relations within marriage, however. The available data indicates that the male marriage partner is generally the principal decision-maker, although joint decision-making does take place, particularly on matters such as the purchase of food and clothing and the schooling of children and less frequently on subjects such as financial matters of the sale of animals. In rural areas, women sometimes have day-to-day authority over the management of farm and household in the absence of their husbands, but are still subject to the authority of the husband or other male members of the family for important decisions about household income or assets.

Of course, family dynamics are often too complex for simple analysis. For example, married women may have specific areas of decision-making autonomy even within an overall context of subordination.[10] On the other hand, the position of women within marriage may be undermined completely by domestic violence, a problem about which only anecdotal evidence is available at present.

Meaningful change in power relationships within families will require social transformation in addition to legal reforms. The media, the portrayal of gender roles in school curricula and the example of Namibians prominent in politics, sport and the arts are all possible avenues of social influence.

Divorce

Not much information is available about gender roles and gender equality at the time of dissolution of marriage. With respect to civil marriage, the law on divorce is outdated and badly in need of revision, but does not embody any formal sex discrimination.

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[9] *Ibid*. See also Ministry of Health & Social Services, "National Safe Motherhood Task Force: Report of the Sub-committee on Legal Matters" (mimeo), September 1992.

[10] For instance, married women in Katutura households are often responsible for money management (Pendleton, fn 3, p 97). Similarly, in the rural areas, while the position of women is generally subordinate to that of their husbands, they may have control over certain property, such as the agricultural produce from their own fields or assets which they have purchased themselves. (See generally Becker & Hinz, fn 4.)

The grounds for divorce are limited to

- adultery,
- malicious desertion (which includes actual physical desertion, making life so dangerous or intolerable that the other spouse is forced to leave, or refusing sexual privileges to the other spouse),
- life imprisonment,
- insanity which has lasted for at least seven years and is pronounced incurable, and
- the imprisonment for at least five years of a spouse who has been declared by a court to be a habitual criminal

A divorce action is always premised on a "guilty party" and an "innocent party". With regard to maintenance, the court may order the "guilty party" to maintain the "innocent party" until that person's death or re-marriage, or it can make a maintenance agreement between the two parties an order of court. Either spouse can apply to the court for sole guardianship or sole custody of any minor children, and the court has discretion to make any order which it deems appropriate for the maintenance of the children. Where the marriage was based on community of property, the joint assets of the couple are usually divided in half upon divorce.

Although the divorce law is gender-neutral, in the absence of unusual circumstances the courts generally tend to award the custody of young children to the mother while allowing for some continued contact with the father - thus providing the basis for an argument that the courts discriminate against men on this point.

Divorces can be granted only by the High Court of Namibia, which sits in Windhoek, meaning that accessibility is a problem for much of the population. Particularly in rural areas it appears that many people who refer to themselves as being "divorced" actually mean that they have agreed on an informal separation, or a separation in terms of the community's customary law. Some women have successfully applied for legal aid in divorce cases. about 40% of the 525 cases in which legal aid was granted between April 1994 and March 1995 involved family matters, most of which were assistance to women in divorce proceedings.

There is virtually no information available on the dissolution of customary marriages, an area which requires further exploration.

Inheritance

The system of inheritance under civil law does not involve any sex discrimination. Where one spouse to a marriage dies, the other spouse's share of the assets of the marriage remains outside of the deceased estate. Both spouses have the right to bequeath their property as they please; there is no legal requirement that any portion of the estate be set aside for the surviving spouse or the children. If either spouse dies without a will, however, that spouse's property is shared between the surviving spouse and the children, or between the surviving spouse and any other relatives who qualify as heirs.[11]

However, there are racial distinctions in the administration of estates left over from the apartheid era. These discrepancies must be eliminated to place all women and men on an equal footing.

Inheritance in customary marriages is governed by the customary laws of the relevant community, unless there is a will. In some Namibian communities, the application of customary law on inheritance has disastrous consequences for widows, who may find that the husband's family lays claim to the house and virtually all of the household assets. In some areas, widows find that they must pay a fee to the husband's family or to the traditional authorities (in Civil Law such fee can be paid in the same way as that to transfer fee paid by a women for a house that was registered in the husband's name to be registered in the wife's name after the death of the husband) in order to remain in the family home, or to continue to cultivate the communal land previously allocated to the household. Parliament passed a resolution requesting traditional leaders to allow widows to remain on their land in 1992, but discriminatory practices continue in some areas. There have also been reports of cases where the seizure of property from widows has been accompanied by violence.

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[11] Intestate Succession Ordinance 12 of 1946

MOTION ON THE RIGHTS OF WOMEN AND ORPHANS

"That -

1. *while the drought situation is still on, immovable properties, particularly the fields and the dwellings thereon, of the deceased persons should not be taken away from the widow or widowers and orphans;*
2. *fees payable to headmen as transfer payments on land inherited by the widow and children should cease to be paid meanwhile;*
3. *all food-related items should not be taken from the surviving spouse and children."*

6 August 1992, introduced by the Hon. Minister of Youth & Sport, Ms Pendukeni Ithana (MP, SWAPO).

In September 1995, a homestead at Oshaandja village belonging to an elderly widow and mother of six was torched by family members of her late husband. The police arrested 12 persons in connection with the incident. This tragedy is unfortunately not an isolated occurrence.

The Law Reform & Development Commission (LRDC) recently launched a project to investigate inheritance practices under customary law, with a view to future law reform. Empirical research on inheritance and other family dynamics will be carried out over the next several years to guide proposals for legal change in this area.

16.5 RIGHTS AND RESPONSIBILITIES AS PARENTS, INCLUDING GUARDIANSHIP AND POWER TO CONSENT TO ADOPTION

The rights and responsibilities of parents towards their children are marked by discrimination against women inside marriage and discrimination against men outside of marriage. However, the Constitution provides a basis for a shift away from the parents' point of view, by giving all children a right "subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents".[12]

Children born inside marriage

As noted in the previous chapter, the husband is the "natural guardian" of any children of the marriage and has final say over most decisions affecting the children. Existing law does, however, require the consent of both parents for the adoption of a child.[13] As discussed above, the unequal position of husbands and wives with respect to their children will be corrected by the Married Persons Equality Bill which is currently before Parliament. This bill will give husbands and wives equal guardianship, while continuing to require the consent of both parents for important decisions such as marriage and adoption as long as this does not interfere with the best interests of the child.

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[12] Namibian Constitution, Article 15(1).

[13] Children's Act 33 of 1960.

Children born outside of marriage

If the mother and the father of a child have never been married, the child is considered to be a part of the mother's family alone. The mother is ordinarily the legal guardian and custodian of the child, and the father has no special right of access to the child. A single mother does not need to consult the child's father or obtain his consent before putting the child up for adoption.

A child born outside of marriage ordinarily takes the mother's surname, although the birth can be registered in the father's surname if the father has acknowledged paternity and the mother has given her consent. The duty to support the child is shared between the parents, in proportion to their respective earnings. However, even if paternity has been acknowledged or otherwise proved, the child will not inherit anything from the father or the father's family unless he or she is specifically named in a will.

Although these rules appear to be biased in favour of women, they actually work to deprive children of their right to interact with both parents, and thereby discourage single fathers from sharing emotional or financial responsibility for the child's upbringing.

A draft Children's Status Act which is under consideration by the Ministry of Health & Social Services would remove all existing discrimination against parents and children born outside of marriage. Consistent with the Constitution, it proposes a move away from a focus on the competing rights of mother and father, towards a child rights approach.

The draft law would give a father of a child born outside of marriage an inherent right of reasonable access to the child unless a court directs that such access would be contrary to the child's best interests. The draft law would also give the mother and father equal guardianship of a child born outside of marriage, as has been proposed for parents who are married. Major decisions affecting the child, such as consent to the child's marriage or adoption, would require the consent of both parents, with safeguards to protect the child's best interests where a parent could not be located or was unreasonably withholding consent. Either parent would have the power to petition the court for sole guardianship if this was in the best interests of the child.

Custody of a child born outside of marriage would automatically vest in the mother as a starting point, because only the mother is certain to be present at the child's birth, and because of the advantages of breastfeeding. However, a father could apply to the court for custody at any time, even before the birth of the child if paternity could be satisfactorily established at this stage. Again the court's decision would be guided by the best interests of the child.

The draft act would also place children born outside of marriage in exactly the same position as all other children with regard to inheritance.

These proposals are sure to generate much discussion and debate. It is indisputable that there are many men in Namibia who take no responsibility for the children whom they father. However, legal changes which encourage a closer relationship between single fathers and their children may have the effect of fostering a greater acceptance of parental responsibilities. The removal of existing legal discrimination against single fathers should help to remove the excuses men sometimes put forward to justify their failure to contribute to the child's financial support, thus easing the burden on single mothers and giving children greater security.

Maintenance

Regardless of whether a child is born inside or outside of marriage, both parents are expected to contribute towards the maintenance of the child in proportion to their financial resources.

Since 1963, Namibia has had a Maintenance Act which provides a simple, low-cost procedure for securing maintenance. Although the law is gender-neutral, in practice maintenance courts are used almost exclusively by women seeking maintenance for their children from the children's fathers.

Every magistrate's court can function as a maintenance court. A woman seeking maintenance for her child makes a complaint under oath to a maintenance officer, a government official whose function is to assist her. Thus, there is generally no need for her to incur the expense of obtaining legal counsel. The maintenance officer has a duty to investigate the complaint. If the parties cannot reach consent on the father's contribution towards the child's maintenance, the maintenance officer can institute a court enquiry.

Either the consent agreement signed by the parties or the order of the court is made into a maintenance order. A man who is subject to a maintenance court order must pay the indicated amount to the court monthly, where the woman can collect it. Failure to comply with a maintenance order is a criminal offence. Where there has been a failure to comply, the court is also empowered to order that the monthly contribution be deducted from the man's wages and paid directly into the court.

The number of maintenance complaints handled by the courts appears to be steadily increasing. For example, in 1987 the Windhoek Maintenance Court handled approximately 400 cases. In 1990 it dealt with 750 cases, and in the one-year period from 1 June 1992 to 31 May 1993 it handled 1 188 cases.

Acting on a suggestion from the LRDC, the Legal Assistance Centre (LAC) carried out a two-year study of the operation of these courts nationwide (see box below.) Recommendations for law reform based on the research findings are under consideration by the Ministry of Justice. The ministry is also working in consultation with the Namibian Police to improve the procedure for summoning fathers to court in maintenance cases. At the ministry's request, the LAC also produced a maintenance manual which will be distributed to all maintenance courts to ensure that the Maintenance Act is administered consistently throughout the nation.

PROFILE OF THE TYPICAL MAINTENANCE CASE

During 1994 the Legal Assistance Centre (LAC) examined a randomly-selected sample of more than 600 case files from maintenance courts in nine locations in north, south, east, west and central Namibia. Unfortunately, no case files from Owambo-speaking areas could be used in the study due to record-keeping problems. The typical maintenance case in the locations where data was collected follows along these lines:

"Typically, a mother requests maintenance of N$150/month for 1 child - thus exploding the myth which is still prevalent in some quarters that women have lots of babies to increase their income.

"The child is likely to be about six years old at the time when the mother first approaches the maintenance court, and the father probably ceased to provide maintenance before the child turned four - or even before the child's first birthday in over half of all the cases studied.

"Once a complaint is made, the father is ordered to appear in court on a given date by means of a summons or a subpoena. There is about a 75% chance that the first subpoena which is issued will be successfully served. If it is not successfully served, this is probably because the father cannot be located, although there appear to be a worrying number of cases in which the police do not carry out their task of serving subpoenas effectively.

"The vast majority of maintenance cases are resolved by a consent agreement between the mother and the father which is made into an order of court. If consent cannot be reached, a decision on maintenance will be made by the maintenance court at the conclusion of an enquiry.

"It is likely that the mother will succeed in obtaining maintenance for the child, as this was the outcome in about 73% of all maintenance complaints in the survey. In most cases, the mother will receive about N$78

/...

per child in terms of the maintenance order. Payments will probably begin within three months or less of the date on which she first approached the maintenance court for assistance.
"If the father falls into arrears with the maintenance payments - as happened in about 26% of all the cases in the survey - this will probably happen within one year of the date of the maintenance order. Enforcement is a difficult matter.

"By the time the typical arrears case comes to court, arrears will be about N$750. For some fathers, falling into arrears is a habitual practice. It would not be unusual for a father who falls into arrears to miss payments on seven different occasions, and there are a significant number of cases in which fathers fell into arrears up to 10 times - indicating that the existing mechanisms for dealing with the problem are inadequate.

"Criminal proceedings take place in only about half of the cases in which the father falls into arrears. In some cases, no court action can proceed because the father cannot be located. Payments may have resumed in some cases, thus eliminating the need for criminal proceedings.

"Most men who appear before the court on charges of failure to pay maintenance admit their guilt. Punishment for failure to comply with a maintenance order is seldom severe. The most common punishment is a suspended sentence of 2-6 months suspended for 1-5 years. (Suspended sentences are preferred by the courts because a man who is imprisoned for non-payment will usually be unable to make any further payments.)

"If the father is found guilty of non-payment, the court is likely to issue an order for the payment of the arrears which are owing. Such orders typically require the gradual repayment of the arrear amount in small monthly instalments, meaning that it is likely that the mother will have to wait about a year before the full amount is paid off.

"Orders for the attachment of wages can be issued by the court any time a defendant is found guilty of failure to make payments as required. This means that the court orders that the employer deduct the required maintenance payment from the man's wages and pay the money directly into court. Employers are bound by law to comply with such a court order. This is probably one of the most effective ways to ensure compliance with a maintenance order, but it is seldom utilised. Attachment orders were issued in only about 10% of all cases in the sample where the defendant was found guilty of a failure to pay.

Legal Assistance Centre, *Maintenance: A Study of the Operation of Namibia's Maintenance Courts*, Windhoek, 1995, p.viii.

PROPOSED AMENDMENTS TO THE MAINTENANCE ACT

Among the law reforms suggested by the Legal Assistance Centre's study are:

- the introduction of mechanisms for obtaining information about the whereabouts of fathers who cannot be located;
- making it possible for a maintenance order to be made in the absence of the father where he has ignored a summons ordering him to appear in court;
- amendments to make it easier to obtain evidence about the father's income and assets;
- empowering maintenance courts to make maintenance orders retroactive;
- amendments to allow payments to be made directly into bank accounts, to save women the inconvenience of having to collect maintenance payments personally;
- empowering maintenance courts to order automatic adjustments in the amount of maintenance payments based on inflation;
- making it possible for arrears to be recovered with interest; and
- empowering maintenance courts to issue orders for the attachment of wages at any stage, without requiring a previous conviction for non-payment.

Legal Assistance Centre, *Maintenance: A Study of the Operation of Namibia's Maintenance Courts*, Windhoek, 1995, pp.143-152.

The Reciprocal Enforcement of Maintenance Orders Act provides for the reciprocal enforcement of maintenance orders between Namibia and countries designated by the Minister of Justice. Many women were disadvantaged in the years immediately following independence by the difficulty in reaching an agreement with South Africa on reciprocal enforcement of maintenance orders between the two countries. However, this situation was rectified in September 1993, and the reciprocal enforcement system was recently amended to streamline and simplify enforcement procedures.[14]

16.6 FAMILY PLANNING

Fertility, contraception and abortion have been discussed above in the chapter on women's health.[15]

The 1992 Demographic and Health Survey found that the vast majority of births in Namibia are wanted; women reported an ideal family size of five children, which is only slightly lower than the overall fertility rate of 5,4 children. When asked about births which occurred during the five years preceding the survey, respondents perceived two-thirds of them as "wanted" at the time of conception.[16] Furthermore, although only 29% of married women and 23% of all women reported that they are currently using any method of contraception, 90% of all women surveyed had knowledge of at least one modern method of contraception.[17]

The Government was reported to be the most important provider of family planning services. Despite the high fertility preferences and the high level of knowledge about contraceptives among Namibian women, the study also found that there is an unmet need for family planning. About 24% of currently married women stated either that they did not want any more children or that they wanted to wait two or more years before having another child, yet were not currently using any form of contraception. Furthermore, only one in five women surveyed could name a place which provided family planning services, which could be attributable either to a lack of services or to a lack of knowledge about the availability of such services. The study showed that there is a marked need to give more attention to the availability of family planning services to rural women, and particularly to women in the north-west regions of Namibia.[18]

Other information indicates that some women experience problems with access to contraceptives because of misinformation or attitudinal problems. For example, the DWA is aware of reports that some clinics deny contraceptives to women who have not yet had a child due to a belief that childbearing capacity may be adversely affected. In some areas, church-run clinics discourage the use of contraceptives, or refuse to distribute them to unmarried women. Some clinics also refuse to provide contraceptives to adolescents under the age of 16 without parental permission.[19]

> *"If you are lucky you will get contraceptives at the clinic, but if you are unlucky you have to bring your parents, an aunt or a sister along to give permission."*
>
> **Female learner, Nankudu, Okavango Region,**

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[14] Reciprocal Enforcement of Maintenance Orders Act 3 of 1995.

[15] See pp. 135-141 above.

[16] Ministry of Health & Social Services, *Namibia Demographic and Health Survey 1992*, Summary Report pp.6-7 and Full Report p.57-ff. The study notes that the responses to this question should be viewed with some caution, as the respondent is being asked to recall past feelings and report them honestly. Women who had unplanned or unwanted births may rationalise them later on and report that they were "wanted" even if this is not strictly accurate. (Full Report p.63.)

[17] See Summary Report p.8.

[18] See Full Report pp. 60-ff and 135.

[19] SSD (UNAM), LAC & UNICEF, *Children in Namibia: Reaching Towards the Rights of Every Child*, Windhoek, 1995, p.86; H. Becker *et al*, *Teenage Pregnancy and the Right to Education*, SSD/CASS, November 1995, pp. 30, 78.

quoted in H. Becker *et al*, *Teenage Pregnancy and the Right to Education*, SSD/CASS, November 1995, p.30.

A further barrier to the use of contraceptives is the need for public education to dispel widespread rumours that they encourage promiscuity or lead to infertility.

The following comments were made by nursing students in a survey carried out during August and September 1991:

"Condoms cause damage to women's sexual organs."
"Condoms cause cervical cancer."
"Contraceptives increase the incidence of vaginal cancer." (A view shared by seven students.)
"Most contraceptives cause cancer." (A view shared by 10 students.)
"Contraceptives cause permanent sterility." (A view shared by three students.)
"Contraceptives produce deformed babies."

The Safe Motherhood initiative of the Ministry of Health & Social Services has achieved marked success in increasing the utilisation of family planning services, particularly in rural areas. For example, the number of new users of such services has increased more than ten-fold in the north-east and about three-fold in the north-west since the programme began. The rate of return visits has also increased. The ministry is also training health personnel in family planning and counselling techniques.[20]

However, none of these facts directly address the question of equal rights between men and women to make family planning decisions. There are some constraints on women's freedom to control their own fertility which warrant further examination and action.

One of the primary limitations on women's ability to decide whether or not to bear children is the law which makes abortion illegal except in certain narrowly-defined circumstances.[21] While it is true that abortion is disapproved of by many Namibian women, some who find themselves pregnant against their wishes resort to dangerous illegal abortions, or even child abandonment or infanticide. Even women who qualify for a legal abortion on one of the grounds set forth in the act (such as danger to the health of the mother or foetus, or a pregnancy resulting from rape or incest) can get approval for the abortion only by obtaining the permission of two doctors and (in the case of rape or incest) a magistrate, thus placing the decision in the hands of professionals who are likely to be male. Some women believe that abortion should be legalised, while others believe that the law on abortion should be tightened. This controversial issue will probably require re-examination in future.

Many of the other factors limiting women's ability to control their own fertility are social issues which are difficult to address. In Namibia, the socialisation of women still emphasises their identity as childbearers and mothers, thus placing constraints on the range of desirable options. A woman who does not want to bear children might well face strong social disapproval. More direct pressure is sometimes applied: women often claim that they fell pregnant because of pressure from boyfriends to prove their fertility, only to find that promises of marriage evaporated after the pregnancy was a fact. Although there is no firm data on the effect of family dynamics on contraceptive use, some women have reported that their husbands or boyfriends will not "allow" them to use contraceptives. Contraception has also acquired a "bad reputation" among some women because of the administration of unwanted contraceptive measures - such as Depo Provera injections or even sterilisation - during the colonial era.[22] These factors are largely intangible ones which can only be addressed through continuing education, the gradual removal of sex role stereotypes, and overall improvement in the position of women.

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[20] SSD (UNAM), LAC & UNICEF (fn.20), pp.85-86.

[21] The Abortion and Sterilisation Act is summarized at pp. 138-139 above.

[22] Attitudes about contraception are discussed in H. Ahrenson-Pandikowm, *Survey of Attitudes Towards the Use of Contraceptives in Namibia*, NISER, March 1992.

"It is not good for wives to use contraception. As God did say, provide children to fill the world." (male interviewee)

"Women are afraid of husbands and illnesses." (female interviewee)

"Women who take contraceptives become very moody and change their personality." (male interviewee)

"Contraceptives make women feel abnormal and cheap." (female interviewee)

"Having children proves that a woman is a good wife." (male interviewee)

"Threatening husbands, physical discomfort, the church and big distances are decisive factors against the acceptance of contraceptives." (female interviewee)

"Having sex without children is like writing a test without results." (male student)

Comments from H. Ahrenson-Pandikowm,
Survey of Attitudes Towards the Use of Contraceptives in Namibia, NISER, March 1992.

16.7 PERSONAL RIGHTS OF HUSBAND AND WIFE

Married women in Namibia are free to retain their own names if they wish. The choice of name is up to the individual, and no notice to anyone is required. A woman must simply use either her own surname or her husband's surname consistently to avoid confusion. Children may take the surname of either parent. In practice, the choice of family name is governed by social mores.

Both men and women, married or single, have a constitutional right to pursue the occupation or profession of their choice.[23] As discussed above, this constitutional guarantee has been buttressed by the prohibitions on sex discrimination embodied in the Labour Act, and by the provision of maternity leave and maternity benefits to remove some of the practical obstacles to the combination of employment and child care duties.[24] However, the absence of affordable child care options continues to operate as a constraint on women's ability to compete in the labour market.

Since Namibia's independence, all discrimination against women in the tax laws has also been removed, so that all persons - male or female, married or single - are treated identically for tax purposes.[25]

16.8 EQUAL RIGHTS TO CONTROL PROPERTY

The limitations placed by marital power on the ability of married women to control property and enter into property transactions has been discussed in detail in the previous chapter. It should only be reiterated here that changes to equalise the legal position of men and women in this regard are imminent, although corresponding changes in the actual behaviour of married persons may lag behind.

16.9 BETROTHAL AND MARRIAGE OF CHILDREN

As noted above, civil marriage is prohibited for boys under the age of 18, and for girls under 15, unless permission is obtained from an appropriate government official. Minors (children under the age of 21) who wish to enter into civil marriage need the consent of their parents. Legislation which is currently before Parliament will equalise the age of consent for marriage at 18 for both boys and girls.

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[23] Namibian Constitution, Article 21(1)(j).

[24] See the chapter on labour development, Article 11 of CEDAW.

[25] Income Tax Act 24 of 1981 as amended by Act 12/1991, Act 33/1991 and Act 25/1992.

Namibian customary laws do not set a minimum age for marriage. In some communities, children are not considered capable of marriage until after they have reached puberty. In other communities, child betrothals and marriages were considered acceptable in former times but it appears that these practices are a thing of the past.[26]

As there is no requirement that customary marriages be registered, it is difficult to assess the minimum age for marriage in Namibia's diverse communities. However, the 1992 Demographic and Health Survey indicated that the marriage of young girls is declining. More than 4% of women between the ages of 35 and 45 at the time of the survey first married at age 15, but this percentage declined to 2% or less for women below age 30 at the time of the survey.[27]

The age of consent for customary marriage is also influenced by the legal age of consent for sexual intercourse, which is presently 12 for girls and 7 for boys, in terms of the Roman-Dutch common law inherited from South Africa at independence. Draft children's legislation which is under consideration by the Ministry of Health & Social Services suggests that the age of consent for boys and girls should be equalised at age 15, which would in effect make 15 the minimum age for entry into civil or customary marriage.

In order to bring Namibian law into compliance with CEDAW, the registration of customary marriages must be made compulsory, as is presently the case for civil marriages.

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[26] See Becker & Hinz (fn.4), pp. 58-ff, 80-ff and 93-ff.

[27] Ministry of Health & Social Services (fn.2), p.50.